

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 19

In the Matter of:

Starbucks Corporation, Case No. 19-CA-299573

and

Workers United Labor Union
International, Affiliated with
Service Employees
International Union.

Place: Seattle, Washington

Dates: July 11, 2023

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

In the Matter of:

STARBUCKS CORPORATION,

Case No. 19-CA-299573

and

WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES
INTERNATIONAL UNION.

The above-entitled matter came on for hearing, pursuant to notice, before **BRIAN D. GEE**, Administrative Law Judge, at the National Labor Relations Board, Region 19, Jackson Federal Building, 915 2nd Avenue, Room 1826, Seattle, Washington 98174, on **Tuesday, July 11, 2023, 9:13 a.m.**



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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Sarah Pappin	53	82	103		
Brent Hayes	107	121			
Rowan "Jameson" Hart	134	143			
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P R O C E E D I N G S

JUDGE GEE: This is a formal hearing before the National Labor Relations Board in Starbucks Corporation, case number 19-CA-299573. My name is Brian D. G-E-E. I'm the administrative law judge presiding over this case. I'm assigned to the San Francisco office of the Division of Judges. Any motions, position statements, or other communications during the hearing should be addressed to that office.

Will counsel please state your appearance for the record?
For the General Counsel?

MS. CHONG: Yes. Angelie Chong, Region 19 NLRB, Jackson Federal Building, 915 2nd Avenue, Suite 2948, Seattle, Washington, 98174.

JUDGE GEE: And Mr. Gaston?

MR. GASTON: I can't hear you 100 percent. My name is David Gaston, however, and I am an Assistant General Counsel at the headquarters of the National Labor Relations Board.

JUDGE GEE: Thank you. And your last name is spelled G-A-S-T-O-N?

MR. GASTON: Yes, Your Honor.

JUDGE GEE: Thank you. For the Charging Party?

MS. MULTHAUP: Marina Multhaup, Barnard Iglitzin & Lavitt, 18 West Mercer Street, Seattle, Washington, 98109.

JUDGE GEE: All right, and -- and before I get to



1 Respondent, let me just explain something. Mr. Gaston is
2 appearing by way of Zoom, so all of the parties have their
3 laptops open -- their -- their sound muted. We're looking at
4 Mr. Gaston by Zoom, but because our laptops are muted, he's
5 being broadcast over the General Counsel's speakers.

6 For Respondent?

7 MR. FRONDORF: For Respondent, Alex Frondorf, 127 Public
8 Square, Key Tower, Suite 1600, Cleveland Ohio, 44114.

9 JUDGE GEE: Other appearances?

10 MR. BECK: Ian Beck, Your Honor. Camelback Esplanade 2425
11 East Camelback Road, Suite 900, Phoenix, Arizona, 85016.

12 MR. GARBER: And Noah Garber, 333 Bush Street, 33rd Floor,
13 San Francisco, California.

14 JUDGE GEE: Ms. Marty, are you making an appearance?

15 MS. MARTY: We're still needing -- Gretchen Marty for
16 Respondent, Starbucks, last name M-A-R-T-Y.

17 JUDGE GEE: Thank you. And Mr. Frondorf, I'm going to --
18 I'm going to spell your surname as F-O-N-D-O-R-F; is that
19 right?

20 MR. FRONDORF: F-R-O-N.

21 JUDGE GEE: I'm sorry. Once again?

22 MR. FRONDORF: F-R-O-N-D-O-R-F.

23 JUDGE GEE: Thank you. Mr. Beck, your surname is spelled
24 B-E-C-K?

25 MR. BECK: That's correct, Your Honor.



1 JUDGE GEE: And Mr. Garber, it's G-A-R-B-E-R?

2 MR. GARBER: Yes.

3 JUDGE GEE: All right. For the -- for the parties with
4 multiple attorneys, I simply ask that for any particular
5 witness, that a direct or cross-examination as well as any
6 particular issue, you pick simply one attorney who will
7 represent your client.

8 General Counsel, would you please offer the pleadings into
9 the record?

10 MS. CHONG: Yes, Your Honor. I offer into evidence the
11 formal papers in this case, marked for identified as GC Exhibit
12 1(a) through 1(m), inclusive.

13 Exhibit 1(m) is an index and description of the entire
14 exhibit. The exhibit has been shown to all parties, and a copy
15 of the index and description has been given to all parties.

16 JUDGE GEE: Thank you. Any objection?

17 MR. FRONDORF: No objection.

18 JUDGE GEE: All right. Ms. Multhaup?

19 MS. MULTHAUP: No objection.

20 JUDGE GEE: Thank you. Hearing no objection, GC Exhibits
21 1(a) through 1(m) are received.

22 **(General Counsel Exhibit Numbers 1(a) through 1(m) Received**
23 **into Evidence)**

24 JUDGE GEE: Although we are here to litigate the case, I
25 am advising you now, before I've heard any of the testimony,



1 that I intend to also offer you an opportunity for settlement
2 discussions at two specific stages of the hearing, first at the
3 conclusion of General Counsel's case, second at the end of the
4 trial. If I inadvertently forget to do so, please call it to
5 my attention and do not hesitate to request a reasonable recess
6 at any other time for further settlement discussions if you
7 believe they may be fruitful.

8 There will be no audio or video recording of this
9 proceeding. We have only one official record, the transcript
10 and the exhibits. If any party observes audio or video
11 recording by anybody other than the court reporter, please
12 bring it to my attention right away.

13 Let me say something, because I forgot to say it
14 previously. Ms. Marty is appearing by Zoom as well.

15 At this point, Gen -- General Counsel, during our pre-
16 trial settle -- or pre-trial conference call, you mentioned
17 stipulations. Are there any stipulations you wish to offer
18 into the record?

19 MS. CHONG: Yes, Your Honor. We are close to finalizing
20 the stipulation. And I just learned that I need to tweak a
21 little bit of language, and then I will be sending that over to
22 Respondent's counsel. These also include joint exhibits.

23 JUDGE GEE: All right. Well, that's -- that's terrific.
24 We are -- we're going to take a short break to work on the
25 subpoena issues, and you can work -- finalize that stipulation



1 then.

2 Are there any mo -- motions at this point?

3 MS. CHONG: Yes, Your Honor. I'd like to move to amend
4 the complaint at paragraph 5A -- actually, paragraph 5. We --
5 we are adding one additional manager to the congregation for --
6 one of the par -- subparagraphs and also clarifying the meth --
7 method of communication on the other. I have put the parties
8 on notice, and any knowledge that I find of my intention to
9 amend the complaint is -- is -- this involves the manager Amy
10 Quesenberry, who was also listed on the complaint and
11 participated in the same call with Jeremiah Mackler on about
12 April 14, 2022. Respondent has had plenty of notice to call
13 Ms. Quesenberry in this hearing. This is not a due process
14 issue, and I am happy to read the breakdown and renumbering of
15 the subparagraphs of paragraph 5. It is all indicated in the
16 email sent July 5, 2023.

17 JUDGE GEE: Are you going to offer the email into the
18 record, or the way we're going to get this into the record is
19 oral?

20 MS. CHONG: I plan on reading it into the record orally.

21 JUDGE GEE: All right. That's fine. Why -- why don't you
22 go ahead and do that now?

23 MS. CHONG: Okay. Paragraph 5A would read, "On or about
24 April 14, 2022, Respondent via Jeremiah Mackler and Amy
25 Quesenberry by phone interrogated its employees about their

1 protected concerted activities."

2 "On or about May 23" -- and this is subparagraph b -- "On
3 or about May 23, 2022, and June 25, 2022, Respondent via Thai
4 Le Douglas via phone interrogated its employees about their
5 protected concerted activities."

6 Paragraph 5C would read "On or about June 24, 2022,
7 Respondent via Jeremiah Mackler by phone interrogated its
8 employees about their protected concerted activities."

9 5D: "On or about June 25, 2022, Respondent via Brendan
10 Branson by text message interrogated its employees about their
11 protected concerted activities."

12 5E: "On or about June 25, 2022, Respondent via Brendan
13 Branson by phone interrogated its employees about their
14 protected concerted activities."

15 5F: "On or about July 14, 2022, Respondent via Jeremiah
16 Mackler by text message interrogated its employees about their
17 protected concerted activities."

18 "On or about" -- 5G: "On or about July 14, 2022,
19 Respondent via Kim Davis -- Davis by phone interrogated its
20 employees about their protected concerted activities."

21 JUDGE GEE: All right. Thank you. And so these one, two,
22 three -- seven paragraphs would substitute in for the -- the
23 five paragraphs currently in paragraph 5, right?

24 MS. CHONG: Correct, Your Honor.

25 JUDGE GEE: All right. Any objection, Ms. Multhaup?

1 MS. MULTHAUP: No objection.

2 JUDGE GEE: Any objection, Mr. Frondorf?

3 MR. FRONDORF: Yes, Your Honor. We object to a new
4 complaint at this extreme late hour, and I'll provide a little
5 bit of argument, please.

6 JUDGE GEE: Okay.

7 MR. FRONDORF: The bench book does provide that Your Honor
8 has the discretion to grant immunity to the complaint, but that
9 discretion is not without limitation. The judge must consider,
10 one, whether there was surprise or lack of notice; two, whether
11 there was a valid excuse for the delay in moving to amend; and
12 three, whether the matter was fully litigated.

13 First, whether there was surprise or lack of notice, we
14 were notified on July 5th, three business days prior to this
15 hearing, that the General Counsel intended to amend the
16 complaint to add more things; entirely new individual, Amy
17 Quesenberry, who is alleged to have engaged in unlawful labor
18 practices.

19 Ms. Quesenberry is a resident of Minnesota, is not easily
20 accessible, and did not have an opportunity -- nor did we have
21 an opportunity to bring her here to testify in this case,
22 because we were notified of it only three business days prior
23 to this hearing.

24 Two, whether there was a valid excuse for the delay in
25 moving to amend, the General Counsel stated they were aware of

1 the existence of Amy Quesenberry. Presumably, we will hear
2 evidence throughout this hearing about Amy Quesenberry. They
3 had notice of her. They had notice of her alleged actions or
4 her actions, and for them to wait until three business days
5 prior to this hearing is deeply prejudicial and a violation of
6 Respondent's due process rights.

7 JUDGE GEE: Pause --

8 MR. FRONDORF: Only other -- the way --

9 JUDGE GEE: Pause right there. Why -- how is it
10 prejudicial?

11 MR. FRONDORF: Because we have not had an opportunity to
12 adequately meet with Ms. Quesenberry or bring her here to
13 provide live testimony to rebut whatever allegations may be
14 made against her.

15 The other individuals who allegations have been made
16 against them, we are prepared now for testimony from them. Amy
17 Quesenberry -- the allegations of her will go un rebutted,
18 because she is in Minnesota, and we learned about this three
19 business days ago.

20 JUDGE GEE: Just one second.

21 MR. FRONDORF: Sure.

22 JUDGE GEE: Go -- go ahead, Mr. Frondorf.

23 MR. FRONDORF: These rules and the consequence they raised
24 at the very last minute are well-known for General Counsel. In
25 Starbucks v. -- sorry -- Workers United -- the matter of

1 Starbucks and Workers United, a hearing before Judge Etchingham
2 on November 20th, so within the 30th of last year -- case
3 number is 19-CA-296261 -- or just give you another two -- last
4 four digits -- 6691 in subject 36 involving the same counsel
5 for the General Counsel, Ms. Chong, and on behalf of Union --
6 you know, also the same individuals, counsel moved to amend the
7 complaint at an equally similar late hour. There, the
8 objection was raised as here as a violation of due process,
9 unfairly prejudicial, and Ms. Chong, the General Counsel's
10 office, had knowledge of this. It sat on the rights and waited
11 until the very last minute to provide notice to the Respondent.

12 They have not provided an excuse for this delay. They
13 have not provided a reason for seeking to amend three business
14 days prior to the hearing, and after hearing very similar
15 arguments to the one that you have now just heard, Your Honor,
16 Judge Etchingham there stated from the bench, I agree with
17 Respondent wholeheartedly. That's something they should have
18 told you and been honest about what happened, and that could
19 have been investigated very easily, because I -- because you
20 would hope. So now to do -- it is ambush, and I find that the
21 Respondent is prejudiced to try and have to defend those
22 allegations at this late date. That's something we should have
23 known coming into this hearing.

24 The same is true here, and for all those reasons, Judge
25 Etcham (sic) -- sorry, I keep mispronouncing the last name --

1 Etchingham denied Ms. Chong's motion, and I'm urging you to do
2 the same here.

3 JUDGE GEE: Thank you. Ms. Chong, could I ask you to --
4 to explain the timing of the -- the notice to the parties that
5 you wished to amend that complaint?

6 MS. CHONG: Yes, Your Honor. Respondent has been put on
7 notice for seven months with Amy Quesenberry listed in the
8 complaint, and this is not a new conversation. It's the same
9 conversation that Jeremiah Mackler had participated in in
10 April. Had Respondent spoken and prepped Mr. Mackler, they
11 would have learned that he was not the only one in that
12 conversation. And Your Honor, the fact that Respondent is --
13 is citing a case that -- that has not yet been decided on and
14 also not aware of all the facts or the fact that the amend
15 was -- the question then was based on the Starbucks production
16 we got at hearing and heard nothing about during the
17 investigation -- I think that's inappropriate and inapplicable
18 here, and Your Honor is -- has the discretion under the -- and
19 the Board rules to allow the amendment of the -- of the
20 complaint during -- after a hearing, and also based on
21 different information -- based on information and details that
22 come in, Your Honor.

23 This is not anything factually different or new.
24 Respondent has been put on notice of the violations.

25 MR. FRONDORF: May I be heard?

1 JUDGE GEE: No. But what explains the delay?

2 MS. CHONG: The delay in -- in --

3 JUDGE GEE: You -- you know -- you've known about Ms.

4 Quesenberry's involvement in what would be the new paragraph

5 5A. When did you learn of Ms. Quesenberry's involvement in the
6 events of April 14th, 2022?

7 MS. CHONG: Your Honor, I can only speak for myself, and
8 that was during prep. I did not investigate this --

9 JUDGE GEE: And -- and -- and you only learned of it when,
10 last week?

11 MS. CHONG: Correct, Your Honor.

12 JUDGE GEE: I see. Okay. You just learned about it --

13 MS. CHONG: Yes.

14 JUDGE GEE: -- recently.

15 MS. CHONG: Which is why I -- I put the parties on notice
16 as soon as I learned and -- and wanted to clarify the actual
17 circumstance. But it doesn't change the conversation. It was
18 in the same conversation. It's just another manager was also
19 present.

20 JUDGE GEE: I see. Go ahead. Go ahead, Mr. Frondorf.

21 MR. FRONDORF: Noted. I listened carefully to the words
22 of Ms. Chong, who is -- that she herself became aware of it. I
23 don't know when she first picked up this file. I don't know
24 when she first started preparing for this trial, but I am
25 venturing to guess that in their file, in the affidavit -- it's

1 allegiance material -- in their notes, in the preparation, in
2 their interviews of witness, Ms. Quesenberry -- the allegations
3 that they -- they would raise or intend to raise in this
4 hearing were brought up.

5 General Counsel's office had knowledge of this, and she
6 has failed to explain to Your Honor the nature of the excuse or
7 the delay. She's not provided an adequate excuse for the
8 long -- long delay. These actions now have been three days
9 shy -- shy of one year ago, and here we are in ambush, when our
10 witness is in Minnesota, unable to attend here today.

11 JUDGE GEE: All right. Thank you, Mr. Frondorf. I -- I'm
12 placing no credence in what you just said about the Region's
13 knowledge of Ms. Quesenberry's involvement in the April 14th,
14 2022 interrogation. You're correct in that pursuant to Rogan
15 Brothers Sanitation, case citation 362 NLRB 547, year 2015, I
16 am to consider three things.

17 First, whether there was surprise or lack of notice -- in
18 this case, there was not. General Counsel notified the parties
19 last week prior to the hearing. You've heard it openly at the
20 hearing before the presentation of any testimony, either by GC,
21 Charging Party, or Respondent.

22 Number two, whether there was a valid excuse for the delay
23 in moving to amend the complaint -- in this case, there is --
24 Ms. Chong represented that she just learned about Ms.
25 Quesenberry's involvement last week and then promptly notified

1 the parties of her intention to amend the complaint.

2 And then, number three, whether the matter was fully
3 litigated -- obviously, before -- because General Counsel
4 raised this -- this idea that she was going to seek to amend
5 the complaint well before the hearing, this matter does have
6 the opportunity to be -- opportunity to be fully litigated. If
7 Ms. -- if Respondent wishes to present Ms. Quesenberry by --
8 through video testimony as part of its defense, I would
9 certainly be open to any such motion. I'll rule on that at
10 that time. I therefore grant General Counsel's motion to amend
11 the complaint.

12 Any other motions?

13 MS. CHONG: No, Your Honor.

14 JUDGE GEE: Ms. Multhaup?

15 MS. MULTHAUP: No, thank you.

16 JUDGE GEE: Okay. Mr. Frondorf?

17 MR. FRONDORF: No, just that we will be motioning, either
18 now or whenever you'd like, to sequester members of the yard.

19 JUDGE GEE: Oh. Oh, okay. Let's -- let's do that now.
20 I'll go ahead and read the sequestration order from Greyhound
21 Lines, 319 NLRB 554 (1995).

22 "A sequestration order has been issued in this
23 proceeding. This means that all persons who expect
24 to be called as witnesses in this proceeding, other
25 than a person designated as essential to the

1 presentation of a party's case, will be required to
2 remain outside the courtroom whenever testimony or
3 other proceedings are taking place.

4 The sequestration order prohibits all witnesses from
5 discussing with any other witness or -- or possible
6 witness the testimony that they have already given or
7 will give. Likewise, counsel for a party may not
8 disclose to any witness the testimony of any other
9 witness.

10 Counsel may, however, inform her or his own witness
11 of the content of testimony given by any opposing
12 parties to rebut the testimony. It is counsel's
13 responsibility to make sure that they and their
14 witnesses comply with the sequestration order."

15 With that, let's go off record.

16 (Off the record at 9:33 a.m.)

17 JUDGE GEE: We're back on the record.

18 MR. FRONDORF: Okay. Can I lodge my objection on the
19 record?

20 JUDGE GEE: Please do, but let me -- let me set it up.
21 There -- there's a question here. Mr. -- Mr. Gaston is
22 appearing today to explain to me the Agency's ability or -- or
23 inability to access electronic documents in the TIFF Plus
24 Format. Respondent is contending that -- that input from co-
25 counsel Gaston is unnecessary, because they have provided the

1 documents in a form to the General Counsel that the General
2 Counsel can access. However, because I need to understand this
3 issue, as well as rule on any motion to resist the hearing to
4 review this electronically -- these electronically produced
5 documents, I would like to hear from Mr. Gaston, just so I
6 understand the useability of documents produced in the TIFF
7 Plus Format.

8 Now, Mr. Frondorf, you wanted to say something. Please go
9 ahead.

10 MR. FRONDORF: Yes. We object to hearing from Mr. Gaston,
11 because this in -- in effect would amount to an advisory
12 opinion. This -- there is no problem. There is no
13 controversy. There is no testimony that Ms. Chong or her
14 office has been unable to access the documents. In fact, a
15 short while ago, we saw them on her screen, but she is unable
16 to print them. In fact, the same documents, 317 pages' worth,
17 may be -- be printed at this very moment. And so there is no
18 issue that they are unable to access them. There's no issue
19 that they are unable to read them. There is no access --
20 argument that they are unable to use them.

21 Consequently, and for those reasons that Your Honor
22 stated, we object to wasting this Court's time in hearing from
23 Mr. Gaston. There's no problem. There's no issue.

24 JUDGE GEE: And the General Counsel?

25 MS. CHONG: Your Honor, I believe that it's important to

1 hear from Mr. Gaston, to hear why exactly Respondent is
2 incorrect in all those points.

3 JUDGE GEE: Okay. Ms. Multhaup?

4 MS. MULTHAUP: Yeah. I agree that there has been no --
5 I -- I believe that there is an issue, and you know, I -- I --
6 I don't have to volunteer my paralegal to testify, but she
7 would also explain why, even though you are able to bring up
8 the documents on your -- or the images on your computer, you
9 know, they're not in a reasonably use -- useable format. So
10 for those reasons, I think his appearance would be helpful.

11 JUDGE GEE: All right. I am going to permit Mr. -- Mr.
12 Gaston to explain to use the Agency's ability to immediately
13 and readily access electronic documents produced in the TIFF
14 Plus Format. I -- I do not fully understand this issue, and I
15 believe I may need to rule on motions germane to this. So Mr.
16 Gaston, I'll -- I'll let you -- give you an opportunity to
17 speak on this issue.

18 Afterwards, I would like to ask you a few questions, and
19 as a courtesy, I would ask that you permit Mr. -- Ms. Multhaup
20 and Mr. Frondorf to ask you some questions as a colleague as
21 well. Is that okay?

22 MR. GASTON: Yes, Your Honor. I can't hear you 100
23 percent, so if I can get any way to increase the amplitude of
24 sound or -- or maybe I would -- can rely on -- maybe when I can
25 hear a speaker on your laptop or -- or something else, just so

1 I -- I can -- I can speak --

2 JUDGE GEE: Could you hear --

3 MR. GASTON: -- and hear clearly.

4 JUDGE GEE: -- better now that I'm a little bit closer?

5 MS. CHONG: I'm going to try one thing, Your Honor. I'm
6 going to mute myself, and maybe you can unmute. And we'll see
7 if you can still be amplified.

8 JUDGE GEE: Sorry, Mr. Gaston. Can hear me okay now?

9 MR. GASTON: Yes, Your Honor. Yes. This is a refreshing
10 change.

11 JUDGE GEE: Okay.

12 MS. CHONG: Okay. Go ahead.

13 JUDGE GEE: Well -- (audio interference) and then when I
14 ask questions, I will re -- re-access my audio.

15 MR. GASTON: I think I understand.

16 JUDGE GEE: Thank you. Go ahead (audio interference) to
17 us why the documents produced in TIFF Plus the (audio
18 interference) cannot readily access.

19 MR. GASTON: Yes, Your Honor.

20 JUDGE GEE: Okay. So please --

21 MR. GASTON: As background, it's worth noting what the
22 TIFF Plus Format is and sort of where it comes from. So a TIFF
23 Plus Format is an adaptation of an output from a proj -- like a
24 document database project called Relativity. Relativity is
25 commonly used. It's used by this agency. It's used by many

1 other agencies. It's used by opposing counsel and is
2 frequently used throughout standard litigation. And Relativity
3 does provide information in a format that is very useful, if
4 you have time and the equipment to resituate it into Relativity
5 for yourself.

6 Well, today this tool is very common. It's not
7 specifically Relativity, but Relativity is sort of a brand name
8 that's very popular.

9 One way you can adjust the output from Relativity is you
10 can get a production. So what's a production? A production is
11 you can get documents of a variety of types. You can get
12 emails. You can get PDFs, Word documents, images -- all those
13 sort of things, and -- and Relativity tool allows you to,
14 instead of having to pluck through those different types of
15 software you would need in or -- in order to review an email
16 versus a Word document versus a PDF, it puts a file into a
17 unified format, and -- and the way that format is initially
18 created is by creating what's called TIFF images.

19 TIFF means -- it is -- it is just a technical term. It's
20 something you do yourself, if you had a larger PDF, and you
21 just said print as TIFF. You would see exactly on your desktop
22 the -- a display of what that looks like. It gets every single
23 page in the document and every single page -- production and
24 turns each page into a singular image.

25 As you perhaps have already seen, these images are not



1 searchable. These images are not assembled in a way that
2 maintains or -- maintains those relationships between an email
3 and attachment -- between, you know, different sorts of
4 documents that might be arranged as organized when whoever put
5 the production together. And it just basically creates a TIFF.

6 Now -- now that we know what TIFF is and sort of how we
7 got there, the question is, well, where does this Plus come
8 from? Well, Relativity -- they in -- layers. We don't --
9 Relativity does -- excuse me -- go through those TIFF images,
10 and it will do a -- sort of a scan-through. And this scan-
11 through, we'll say -- well, capture is called collected -- on-
12 screen clear -- clear correction. It -- it's collected text.
13 So it'll collect the text that it can absorb from those TIFF
14 images and read even from the data files, depending on how you
15 set it up.

16 And from there, you can use a database file to marry
17 the -- the collected text, right? So the -- the -- well, it's
18 a metadata collected from the original files, and that -- just
19 as background, that data is -- when you send an email at 12:45
20 today -- if you sent one to me, Your Honor, it would have the
21 substance of what you sent to me, but it's unlikely that you
22 would have written a time and a date, right? The computer will
23 do that for you.

24 That similar information is known as metadata. It's
25 information that the computer uses to organize information on



1 its own platform, for -- for its own use, so that then users
2 can use that information more efficiently.

3 So it'll look through the metadata and will capture those
4 TIFF images I talked about, and it will capture what's called
5 that -- that -- that on-screen character recognition. It
6 will -- will capture that sort of extracted text. What -- I
7 mean, from what then -- what then is expected is you will use a
8 table of content files, just for lack of a better term, and
9 marry all those up using the Relativity platform. So turning
10 over a Relativity production or what they're calling it, TIFF
11 Plus production, especially without layers that can be
12 immediately used by General Counsel, is akin to producing a
13 bicycle disassembled in a box. Certainly that bicycle can be
14 reassembled, and certainly that bicycle can be ridden later.
15 But time is required in order to put it into a platform of
16 workspace where you can build that bicycle, and then being able
17 to develop the tools that's required in order to use it,
18 especially if there is -- it's a surprising amount, or maybe
19 the production is not as expected.

20 So I think to address the instinct question, Your Honor,
21 why take so long? Right? And why is this not reasonably
22 usable? First off, when you -- well, the production is not
23 meant for a person. It is not meant for an (sic) human to
24 read. It's meant for another tool, an eDiscovery tool that can
25 adapt that Relativity format to produce it then for a human to

1 read. Now, there's a tension here, because if you look at
2 Sedona, and you look at some case law, you'll say, well, what's
3 the problem? TIFF law, excuse me, TIFF Plus is considered
4 perhaps a reasonable way to come up with the information,
5 especially where there's other equities at hand that's
6 specifically related to privilege. The problem with this is
7 that those -- that case law in general, and certainly Sedona,
8 if you continue to read through examples, and I will point you
9 to, I believe, illustrations on page 187 of the Sedona
10 principles for where it goes through. And I'll -- I'll make
11 mention of that in a moment.

12 It -- what it does is -- is it takes time to move that
13 information from that format to another. So when you look at
14 the case law, it's like -- if -- where all those cases,
15 understand that there is a close to standard discovery that you
16 would encounter in federal district court, and that then, that
17 close that discovery and the date of trial are different,
18 right? Usually by days, weeks, sometimes even months. What
19 we're dealing with here is a presentation of information
20 produced for that type of exchange, but yet revealed in a way
21 that does not allow us to get to the that information using
22 those tools.

23 And so what that means is that well, if we were in federal
24 district court or if there were time in order to processes
25 this, maybe -- maybe the production would be okay. We don't

1 have that time. And it's well known by opposing counsel. And
2 it is that difference in time, and that disparity between our
3 hearing environment and the standard federal district court
4 that creates the tension that lies before Your Honor. And --
5 and I guess, Your Honor, just -- just to close, you know, we
6 have tried to meet and confer on this case and so many others
7 to -- to talk about ways to get in, including printing.

8 Printing shouldn't be something that if it weren't produced on
9 a paper, but why didn't they? Why did they produce it in this
10 strange format where the documents aren't assembled, they
11 aren't arranged, there's no way to really get at it. It's a
12 good. But so Sedona does think of this, right, within
13 principle 12. And I'm going to give briefly in one second.

14 Yeah, and briefly -- briefly add that -- and I -- I
15 wouldn't be super cool with this citation. It's on page --
16 well, intro on page 185 and illustration too, of the Sedona
17 principles. And it -- and -- and it discusses this in such a
18 way that I -- I think it's worth reading into the record. It
19 discusses an instance, an illustration where there's a back and
20 forth on TIFF Plus. Maybe TIFF Plus was could have been okay
21 in that instance, but that we can confirm never really
22 happened, and it was never really a meeting of minds. And
23 instead, the opposing party simply produced as they chose to.

24 And to quote from the Sedona Conference Journal, page 186,
25 internal page 26, it says, "Making a real decision about the

1 form of production, the responding party failed to honor its
2 rule 26(f), and willfully failed responsibilities to meet and
3 confer in a reasonably cooperative manner, in an effort to
4 either resolve the issue or present it to the court." And of
5 course, I will leave it to Your Honor and all counsel to read
6 that in context. I don't want to offer anything out of
7 context. I'm just reading the relevant part.

8 And so there -- there it is, Your Honor. It's -- it's
9 produced in a format that perhaps could be usable in federal
10 district court, or with time to review it, but it's instead
11 produced like this, despite a request otherwise, despite our
12 subpoena instructions asking for it in a way that is reasonably
13 usable, we get it in a unilaterally chosen format, and we don't
14 get a chance to -- to prepare to process it in a way that
15 will -- would put us on equal footing. And I just wonder if I
16 heard some commentary, and then I'll close for additional
17 questions, Your Honor, from you. It's interesting, you know, I
18 heard some protestation said about, well, you can -- you can
19 see it, you know, and what's the problem? We've produced it.

20 And my response to this is simple. The information was in
21 general created electronically. It was reviewed
22 electronically. It was maintained electronically. It was
23 produced electronically, yet now we're having to shift to
24 analog production that doesn't even capture the original
25 organization of the documents, right, because it's a page-by-

1 page production. It was really unclear. The only thing that's
2 actually clear is -- is the Bates stamps, right, it's this
3 that's why that TIFF Plus part kind of exists. And so they
4 don't have any of the subsidiary functionality, to -- in order
5 to review those documents as they were processed, maintained,
6 reviewed and produced by opposing counsel. And it is that
7 disparity that we challenge, Your Honor.

8 JUDGE GEE: Thank you. Given that General Counsel --

9 MR. FRONDORF: Could we mute that while he's talking?

10 MS. MULTHAUP: Mute?

11 MR. FRONDORF: Yeah, so it doesn't echo -- we don't hear
12 him with.

13 JUDGE GEE: Given that General Counsel has the documents
14 and is now printing them, what would be the difference between
15 those printed documents, and having them in electronic form?

16 MR. GASTON: I see that General Counsel is waiting. Can
17 General Counsel make clear that I'm okay?

18 JUDGE GEE: Now, it sounds okay. It's okay.

19 MR. GASTON: Okay. So the difference between an
20 electronic form and a paper form in this instance, strikes
21 towards the heart of what reasonably -- it strikes to the heart
22 of what we mean by reasonably usable. First off, the navigator
23 that I mentioned, the organizational data, is not at all
24 available, right? It's not available in the way they produced
25 it right now. Once we put it in the tool, that takes about

1 three days, maybe we'll be able to access it on equal footing.
2 But presently -- presently, we -- we have a photo, you know, a
3 photo album of the documents in a page-by-page play and a paper
4 production from that photo album inherits all the problems of
5 that issue. And so what that means is that we don't even have
6 the -- I think I have an echo. If -- Your Honor, if you can
7 mute for just one moment. Thank you. So -- and so what that
8 means is that we're, you know, we're not equipped to understand
9 whether those documents were arranged to really simulate a
10 paper production, even if it were a paper production.

11 So it's a nuanced system too, but it's an -- it's an
12 important one, because the production from a Relativity output
13 and printing it out degrades in any opportunity to understand
14 the documents as they might have been collected and used by
15 opposing counsel and reviewed by opposing counsel before
16 General Counsel -- Counsel for General Counsel has a chance to
17 review. As in opposition, if there's a simple payment
18 production, at least those documents would have been printed
19 out in a way that might inherit the -- the characteristic of
20 the document as they made them maintained. But the bigger
21 question, Your Honor, is functionality.

22 I thought I -- being brief, I'll make it -- I'll try to
23 highlight the point here is that as it comes out of that tool,
24 and we review it on paper, we don't know when one document
25 begins or ends. We don't have that information until it goes

1 into Relativity. We don't know context, in terms of amenity,
2 when it was served, who sent it, all that (audio interruption)
3 sort of institutional data time, if at a lower resolution,
4 certainly doesn't mimic how we can -- how it was captured and
5 maintained. And quite honestly, you know, every advantage has
6 been enjoyed by the opposing party to search those documents,
7 to review these documents, to collect them and to put them in a
8 format that is useful for their purposes for viewing and
9 reviewing them.

10 Paper production is bad, Your Honor. A paper production
11 out of Relativity is even worse.

12 JUDGE GEE: All right. Let me -- thank you, Mr. Gaston.

13 MR. GASTON: Wait a minute.

14 JUDGE GEE: Let me note --

15 MS. CHONG: Could you unmute yourself, Your Honor?

16 JUDGE GEE: I did.

17 MS. CHONG: Okay.

18 JUDGE GEE: Let me note --

19 MR. GASTON: Your Honor, you're on mute.

20 JUDGE GEE: Thank you. I'll do it again. Let me note
21 this, that in your explanation as to why production in TIFF
22 Plus is deficient for purposes of the Agency's review, you did
23 cutout for about 30 seconds. There -- there was about 30
24 seconds of your explanation that we did not hear.

25 MR. GASTON: What I'd hoped to communicate towards the end

1 of my comments were that in a paper production, you are going
2 to have at least basic organization of the document as they
3 were maintained. So we at least know when the documents begin
4 and end. There'd be a paperclip or a staple. We at least know
5 how the documents were a way and efficiently collected, because
6 they'll be, hopefully, put together in a logical way and
7 ideally put together, you know, responsive to subpoena
8 paragraph. That -- those types of basic organization of the
9 document are not going to be inherent in Relativity TIFF Plus
10 production. It's generated and engineered to be put into a
11 Relativity tool, where those sort of breaks and those sort of
12 organizational queues are going to be brought in by the system
13 after a few days in order to sort of create that bike in the
14 example I used before to build the bike.

15 So you know, but it -- but I think the biggest part, Your
16 Honor, is that even a paper production in this instance is
17 problematic, because the documents were created, maintained in
18 the ordinary course of business electronically. And the
19 counsel had opportunity to use things like search terms, or
20 even more sophisticated tools to identify and collect the
21 information and then process it for production by General
22 Counsel for the General Counsel, by inheriting all of the
23 problems of that TIFF Plus production, we use every possible
24 chance to go through the information in a useful way. And so
25 what I said before is a paper production is bad, because it

1 doesn't put us a footing, as opposing counsel to be able to
2 review and use that information in a useful -- reasonably
3 useful way electronically. Right? That's bad. But to
4 generate a paper production from a TIFF Plus Relativity
5 production, to -- to do it from, you know, a part of a -- from
6 a disassembled bike is even worse, because we don't even have
7 cues of the -- we don't have the paper clips. It's just a
8 stack of paper. It's a document dome. It's in this -- it's
9 actually a little bit worse, because it's not even -- it's not
10 even well organized and the resolution's lower, so it's hard to
11 sometimes see things. Hopefully, Your Honor, that answers your
12 question. And hopefully, I was heard.

13 JUDGE GEE: Thank you, Mr. Gaston.

14 At this point, it's not evident to me that the
15 shortcomings that you discuss are in play with regard to this
16 document production. I'm not saying they are. I'm not saying
17 they're not. It's just too early for me to say one way or the
18 other. So let me have Charging Party counsel and then
19 Respondent counsel have the opportunity to ask you questions.
20 And then we'll -- we'll take a break for General Counsel to
21 lead the witnesses to the witness room and then review the
22 printed documents. So Ms. Multhaup, to ahead and ask any
23 questions you may have.

24 MS. MULTHAUP: Thank you. I don't have any questions at
25 this time. Thank you.

1 JUDGE GEE: Thank you. Mr. Frondorf?

2 MR. FRONDORF: Yes, I'm going to turn it over here in one
3 moment to my colleague Gretchen, who is on the Zoom call, to
4 respond to Mr. Gaston. But I would like just to note that
5 Mr. Gaston's soliloquy, while very interesting on TIFF Plus
6 format generally, is an academic disquisition about TIFF Plus.
7 It made no bearing, as Your Honor has already acknowledged,
8 about the applicability to the facts here. And the facts here
9 speak very loud and clear. They're very likely printed out on
10 a printer upstairs some feet above our heads. I'm going to
11 turn it over now to Gretchen, who's going to continue this
12 academic exercise.

13 Gretchen?

14 JUDGE GEE: Okay, Ms. Marty. Go ahead.

15 MS. MARTY: Thanks, Your Honor. Thanks, Alex. So just to
16 respond to some of Mr. Gaston's comments there. The -- you
17 know, the -- the layout of the production, as you went through
18 the TIFF Plus, the way the data is, that's all -- that's all
19 established kind of historically accurate information related
20 to TIFF Plus, being, you know, the -- the sort of issues that
21 we are running up against is, you know, the sort of advent of
22 EFI into those four proceedings and for us, as a, you know, as
23 a Respondent to be able to correct, search and produce large
24 volumes of data based on the requests that come in from the
25 General Counsel.

1 The only way to do that effectively and with any
2 efficiency is, you know, through the Relativity platform.
3 Therefore, we produce out of that Relativity platform so that
4 the documents can then be loaded, then counsel for the General
5 Counsel receives them into their own Relativity platform to
6 review the documents, as we viewed the documents when we can
7 see them in our environment, they can then see the produced
8 forms in their Relativity environment. The size of this
9 production, which is what dictates how long it would take to
10 load a Relativity production, is extremely small. It's only
11 300-some pages. You know, we have sort of polled vendors as we
12 have been going through this argument with Counsel from General
13 Counsel, in multiple different matters, and most of our vendors
14 say, if you have a vendor on standby that knows when a
15 production is going to come in, as Counsel for the General
16 Counsel did this morning, that production can be loaded in an
17 hour or two.

18 So in the time that we have been sitting here and Counsel
19 for General Counsel, you know, put the full papers on the
20 record, we did sort of introductions, things like that, if they
21 had a vendor on standby, this production would be available to
22 them in a searchable and sortable way in a Relativity
23 environment to which they would have access. In the meantime,
24 they are able to access the pages of the document. To Mr.
25 Gaston's point that they have no idea where the page breaks

1 are, that's not actually true. In the delivery this morning,
2 we also delivered a folder full of text files. The text files
3 are organized by document; therefore, they are named from the
4 starting Bates number of every single document.

5 So I'm looking at that folder right now, and I can tell
6 you from that folder, that there are 25 different documents,
7 and I can go through and give you the starting Bates number for
8 every single document in this production.

9 Additionally, those text files that were provided, those
10 are searchable. So not only do they give you the starting
11 Bates -- they give you those page breaks that Mr. Gaston was
12 talking about. They also would be searchable, if you wanted to
13 search through the folder, in, you know, in that text file
14 folder, it would give you the results to keyword searches. So
15 you know, while they're waiting around for their vendor to get
16 this loaded into a Relativity platform, they actually do have
17 usable access to the documents in this production. So you
18 know, also they can be printed, as we've talked about, and it
19 sounds like printing is on the way.

20 You know, in -- in the days of old when we used to hand
21 over the documents, that's -- they'd have to flick through them
22 manually. This is no -- this is no different for the TIFF
23 images, and then those text files are searchable. Once it gets
24 loaded into a Relativity database, they have full searchable --
25 suitability and able to sort and, you know, do all the things

1 that -- that would be required under the Federal Rules of Civil
2 Procedure. And additionally, Mr. Gaston also noted, you know,
3 we've been having this argument in multiple, multiple other
4 venues and those are other -- you know, in other -- in front of
5 other ALJs. And you know, within the past few months, we've
6 had three separate ALJs rule that TIFF Plus production is a
7 reasonably usable format, that Respondents came produce in TIFF
8 Plus and the introduction of ESI and a request for documents in
9 a reasonably usable format, TIFF Plus qualifies as that, and we
10 are able to produce in that format. And that's Judge Eleanor
11 Laws, Judge Arthur Amchan, and Judge Geoffrey Carter.

12 JUDGE GEE: Thank you.

13 MS. MARTY: Thank you.

14 JUDGE GEE: Mr. Gaston, as Ms. Marty represented, there
15 about 300 plus pages that have been presented. Is it accurate
16 to say that, say from an hour from now, the Agency has the
17 capability of converting these Tiff Plus format documents into
18 a Relativity or other such format document that would make them
19 usable to the General Counsel?

20 MR. GASTON: Your Honor, that's -- Your Honor, that's not
21 true at all. If you invent a special instance and line up
22 everything exactly as Attorney Marty had mentioned, on a
23 completely different circumstance, you know, there's -- there's
24 a plausibility that someone could do it at an unknown cost, at
25 unknown expense and unknown burden, right? But what we have is

1 a standard vendor used by this agency, used by many others,
2 including the Department of Justice, a standard vendor, on a
3 standard contract, on a standard time frame, where a production
4 usually regardless of size, because that's not necessarily how
5 it's measured, right? We don't measure production necessarily.

6 Well, if it's smaller, we can handle it faster. If it's
7 bigger, it takes longer. That's true, right? But there's a
8 threshold moment where we need to get this information as
9 collected from opposing counsel. We then need to send it to
10 the vendor.

11 MR. FRONDORF: Your Honor?

12 MR. GASTON: Then that whole handoff then takes time.

13 From there, the vendor needs to process it --

14 MR. FRONDORF: Regardless --

15 MR. GASTON: -- and there too --

16 JUDGE GEE: Pause. Mr. Frondorf, let General Counsel
17 finish. You will have an opportunity to raise any points
18 afterwards. But please, it -- it wreaks havoc with the
19 transcript. So if you'd be so kind. Okay. Mr. Gaston, go
20 ahead and finish.

21 MR. GASTON: Yes. We they then have to translate another
22 handoff where it then needs to go to a -- the vendor to
23 process. And again, this is the industry standard. This is
24 used by a large number of agencies. It's -- and it's -- okay.
25 And then there's one more piece, Your Honor, I want to make

1 super clear, because what I didn't talk about during my initial
2 comments were the Relativity platform itself, right, in that
3 the Relativity platform requires -- requires the tool to be set
4 up on the user's machines, we have to know in advance who's
5 going to use it so that we can get the credentials and setup.
6 The Relativity platform doesn't open up like Microsoft Word.
7 It's managed by the vendor. And it's a cloud service that's
8 managed by the vendor, and so the vendor needs to know, for
9 security reasons, as well as others, that -- who is using it,
10 what credentials to set forth.

11 And by the way, Relativity is, you know, it's a fairly
12 useful tool. It's fairly intuitive tool. But what it isn't,
13 right, is as easy to read as a data file or even something like
14 a searchable PDF created from those native documents. And so,
15 you know, the Counsel for General Counsel, not everyone knows
16 how to use Relativity, you know, immediately, you know. So
17 it's -- it -- I could show you an instance of it myself and,
18 you know, you'd look at it, and you'd probably get a chance to
19 kind of use it, but it's not -- it's not Google, Your Honor.
20 You know, and it's not anything quite so simple. It's a
21 sophisticated tool for complex discovery matters. And its
22 usability functionality reflects that.

23 So I want to make several points. So one is that there is
24 a reasonable delay in getting the information from opposing
25 party to the headquarters to the vendor. There is a reasonable

1 delay for the vendor to process it in a day or two, maybe
2 three, depending on things like holidays and other, you know,
3 that vendors are going to go through as a national vendor.
4 It's a global vendor. You know, we aren't cutting corners or
5 anything like that, and it's a reasonable delay also, for the
6 time packs to both be able to be prepared to have that -- the
7 credential so they were ready and to have the Counsel for
8 General Council prepared.

9 Relativity doesn't just pop up. There's complexities with
10 the tool that I didn't really get into, but they need to be
11 considered as well. So you know, I strongly, strongly oppose
12 any representation. You know, we don't -- we don't need IT
13 assistance from Starbucks, we need compliance. And if we had
14 time, really, Your Honor, time to process it and put into our
15 platform, we can review it. That's -- that's the critical
16 feature here. That's why it's okay sometimes, because of this
17 report to get the time that's time that's baked in. Right?
18 That's why it's holding back now, because that time doesn't
19 exist.

20 JUDGE GEE: All right. All right. Go ahead.

21 MS. MARTY: Your Honor, I would like to respond.

22 JUDGE GEE: No. No, no. No. Thank you, Mr. Gaston. Ms.
23 Marty, you'll have your chance. Just sit tight, please. We're
24 talking 300 Plus pages. Can this be done today? Mr. Gaston?

25 MR. GASTON: No, Your Honor.

1 JUDGE GEE: Why not?

2 MR. GASTON: It cannot be done because of the points I
3 mentioned. We would need to send it to the vendor. From
4 there, the vendor needs to process it. From there, the vendor
5 needs to make it available on a cloud platform, such that the
6 Counsel for the General Counsel, can then go through the
7 documents on equal footing as they were produced.

8 JUDGE GEE: Can't this be done by tomorrow using the same
9 procedure? We're talking about 300 pages.

10 MR. GASTON: I -- I understand that the document
11 production size is small but that's not necessarily the
12 impeding factor here. It's that we have to set up an instance.
13 We have to build the bicycle. It doesn't matter if the bicycle
14 is for a toddler or if it's Lance Armstrong's bicycle, right,
15 the complexity of the bicycle is important. But more
16 importantly is we have to actually set up that workspace and do
17 the work in order to convert it from what you've seen before
18 Your Honor into something that we can use. So --

19 JUDGE GEE: All right, so tell me a date and time when
20 this can be completed by.

21 MR. GASTON: One second, Your Honor, I'll confer with my
22 colleague, and we can get an estimate.

23 MS. CHONG: Your Honor?

24 JUDGE GEE: Yeah. Sit tight.

25 MR. GASTON: Your Honor, we think we can get it on two



1 business days. I have to -- I have the proviso that we're
2 processing from other Starbucks cases where this issue has
3 again been raised. So I don't want to offer an ironclad
4 promise, but it is our belief that two days should be enough to
5 put this into a Relativity platforms such that it is reviewable
6 equally by General Counsel as is by opposing counsel.

7 JUDGE GEE: So this Thursday by 10 a.m. Pacific Time?

8 MR. GASTON: I -- I guess for the record, you know, I --
9 I'd like to believe that we could hit that deadline, but I -- I
10 can't for sure state the timing of the vendor. But we can
11 certainly make clear to the vendor that this is on an expedited
12 basis.

13 JUDGE GEE: All right. Thank you. Would you turn off the
14 speakers? All right. I -- I cut off a number of people. I'm
15 sorry. I can only think -- keep one thought in my head at a
16 time. General Counsel, did you -- did you say something?

17 MS. CHONG: Yes, Your Honor. I wanted to show you an
18 example of an image that we just printed. And it shows
19 basically one sheet that says redacted with only the Bates
20 numbers. So all the metadata's missing. No -- there are no
21 identifiers. There's no knowing what this is in response to
22 and what the redaction is for.

23 JUDGE GEE: But my understanding is that Ms. Marty said
24 she can provide you with an index indicating -- correlating the
25 Bates stamps numbers with the subpoena request. For example,

1 paragraph 1 correlates to pages 1 through 88.

2 MS. CHONG: That is not what I heard, Your Honor. I
3 understood that documents could be identified based on start
4 pages based on the Bates stamp, but we don't know what it's in
5 response to. But the problem is even with that --

6 JUDGE GEE: But --

7 MS. CHONG: -- that the identifier isn't written.

8 JUDGE GEE: But isn't the response to a particular
9 enumerated paragraph in the subpoena?

10 MS. CHONG: Right. Right, Your Honor.

11 JUDGE GEE: So you would know.

12 MS. CHONG: But we're so missing the metadata.

13 JUDGE GEE: Well, sure. That's a different issue though.

14 MS. CHONG: And -- and I do want to point out, Your Honor,
15 that numerous ALJs have decided and ordered that TIFF
16 production is inadequate and is not reasonably usable on the
17 day of hearing. And there are several cases by -- one I can
18 cite to you is by ALJ Key in Case 08-CA-290673, by Judge
19 Sorg-Graves, 01-CA-302321, who also made -- decided that TIFF
20 productions made on the morning of the hearing are not
21 reasonably usable. And also ALJ Carter, 14-CA-294830, in
22 addition to Judge Olivera's decision, which was affirmed by the
23 Board, Your Honor.

24 JUDGE GEE: All right. Ms. Multhaup, do you want to
25 address this?

1 MS. MULTHAUP: No. Thank you.

2 JUDGE GEE: All right. Thank you. And then Ms. Marty. I
3 apologize. I cut you off earlier. Go ahead.

4 MR. FRONDORF: I -- I'm going to step in here, Your Honor.

5 JUDGE GEE: Go ahead, Mr. Frondorf.

6 MR. FRONDORF: Okay. We have to ground this discussion in
7 facts, in the facts that are before Your Honor, not an academic
8 exercise. You have now seen this morning, Your Honor, the
9 documents on General Counsel's computer screen. You have now
10 seen in her hand, a paper copy of one of the 317 pages
11 demonstrating the ability to access, print off and read. Her
12 claim that she doesn't know where it comes from. Well, Your
13 Honor, if I walk down to the library and pull a book off of the
14 shelf and open to a random page, I wouldn't know what the book
15 was about either. You have to turn the pages back a few days,
16 and then you'll see what you're reading. The same is true
17 here. She has access to this. The time we have now taken in
18 discussing this academic exercise, she could have fully
19 reviewed them.

20 I will represent you as an officer of the court, it takes
21 about 12 minutes to flip through the 100 -- 317 pages of
22 document production. That's all that takes. We have taken far
23 more than 12 minutes here this morning.

24 JUDGE GEE: All right. Thank you. I've heard everyone on
25 this issue. We will proceed. Let's go with designation of

1 party representatives. General Counsel, do you wish to
2 designate somebody as General Counsel's representative?

3 MS. CHONG: No, Your Honor.

4 JUDGE GEE: All right. Ms. Multhaup?

5 MS. MULTHAUP: Yes. I need one minute to confer about
6 that though.

7 JUDGE GEE: Okay. We'll just go off record, Bruce.

8 (Off the record at 10:14 a.m.)

9 MR. GASTON: Thank you.

10 THE CLERK: We're back on the record.

11 MS. MULTHAUP: Yes, the Charging Party does make Sarah
12 Pappin to be the Union Party representative.

13 JUDGE GEE: All right. And could you spell both names for
14 me, please?

15 MS. MULTHAUP: S-A-R-A-H P-A-P-P-I-N.

16 JUDGE GEE: All right. And Respondent?

17 MR. GASTON: Thai Le Douglass.

18 JUDGE GEE: Would you spell it? Spell all three names for
19 me, please.

20 MS. CHONG: T-H-A-I L-E D-O-U-G-L-A-S-S.

21 JUDGE GEE: Okay. Thank you. While we were off record,
22 there was a -- there was a question about the production of the
23 subpoena documents. And Mr. Frondorf, could I just ask you to
24 describe the nature of the documents produced, for example,
25 number of pages, completeness, number of pages which respondent

1 redacted and why, as well as number of pages presented
2 unredacted, if you please?

3 MR. FRONDORF: Certainly. There are in our document
4 production, a total of 25 documents. Together, they comprise
5 317 pages. Of those pages, roughly 25 of them have unredacted
6 material. The bulk, and by bulk, I mean, the vast majority in
7 excess of 90 percent of those 317 pages, represent what is our
8 understanding to be the totality of text exchanges between a
9 Starbucks store manager and partners at that store. We have
10 reviewed each of those text exchanges and redacted those text
11 exchanges which lie outside of the subpoena, for reasons of
12 temporal, for -- outside the time period specified in the
13 subpoena and pursuant to your order on our petition to revoke
14 or outside of the scope, the content scope, of the subpoena.

15 Those text exchanges that remain within the content and
16 temporal limitation of the subpoena have been produced.

17 JUDGE GEE: In unredacted form.

18 MR. FRONDORF: In unredacted form.

19 JUDGE GEE: So essentially, what you're saying, I believe,
20 is that the 25 pages of documents are the only text that's
21 responsive to the subpoena request.

22 MR. FRONDORF: That is exactly correct.

23 JUDGE GEE: And for the 292 or so pages that are redacted,
24 those are simply not responsive, in terms of the temporal
25 scope. For example, they were text changes outside the time

1 period, or in terms of their substantive scope. For example,
2 they do not pertain to the subject matter of the subpoena
3 paragraph. Is that correct?

4 MR. FRONDORF: That's correct. One or both, yes.

5 JUDGE GEE: So that causes me to ask the question, why are
6 they produced in unredacted form, or excuse me, redacted form,
7 if they're simply not responsive to the subpoena?

8 MR. FRONDORF: We could have done it that way, I suppose.
9 We could have just removed the pages. We thought we were being
10 as complete in our responses as possible. That's all.

11 JUDGE GEE: Thank you. So I can phrase it in the
12 affirmative. Respondent's contention is that it furnished all
13 documents in unredacted form that are responsive to the
14 subpoena.

15 MR. FRONDORF: Correct.

16 JUDGE GEE: General Counsel?

17 MS. CHONG: Yes, Your Honor. I'd like to move for an in-
18 camera inspection of the documents produced.

19 JUDGE GEE: Thank you. Ms. Multhaup?

20 MS. MULTHAUP: I -- I would join the General Counsel's
21 motion. I had that entire situation where there's so much
22 redacted without any log or -- or any -- any way to tell what
23 was redacted for what reason, or -- or why. I would also move
24 for an in-camera inspection.

25 JUDGE GEE: Yeah. Well, typically a log is provided when

1 the privilege is being raised an attorney, client, or -- or
2 work product. In this case, Respondent raises no such
3 privilege, rather, Mr. Frondorf's representation is simply
4 they're not responsive documents. All right, well, I'm -- I'm
5 not going to rule on this at this moment. Let's -- let's go
6 off record. We'll --

7 MR. FRONDORF: May I put on the record, to the extent,
8 just because --

9 JUDGE GEE: Yes, of course.

10 MR. FRONDORF: -- it's in place on record, that we
11 strenuously object to an in-camera review. And we're happy to
12 provide arguments when Your Honor -- at the time you so choose.

13 JUDGE GEE: That's -- that's fine. Thank you very much.
14 Let's -- let's go off record.

15 (Off the record at 10:21 a.m.)

16 JUDGE GEE: It is 11:02. We're -- we're back from a
17 little bit of an extended break. My understanding is, General
18 Counsel you wish to offer into the record a -- a number of
19 joint exhibits?

20 MS. CHONG: Yes, Your Honor.

21 JUDGE GEE: Okay.

22 MS. CHONG: I'd like to offer into the record Joint
23 Exhibits 1 through 7, which is a stipulated joint exhibits and
24 stipulations of fact and has been signed by all parties. And
25 we'd like it in evidence.

1 JUDGE GEE: All right. May I see and would you please
2 give a copy to the court reporter?

3 MS. CHONG: Do you mind if I grab one of the packets back?

4 MR. FRONDORF: Oh, yeah, please.

5 MS. CHONG: It's for Judge Gee.

6 MR. FRONDORF: You can have it.

7 MS. CHONG: Okay.

8 MR. FRONDORF: Okay.

9 JUDGE GEE: Let's go off record for a moment.

10 (Off the record at 11:03 a.m.)

11 THE CLERK: We're back on.

12 JUDGE GEE: I'm looking at Joint Exhibits 1 through 7.

13 Any objection to their entry into the record? Ms. Multhaup?

14 MS. MULTHAUP: No objection.

15 JUDGE GEE: Mr. Frondorf?

16 MR. FRONDORF: No objection.

17 JUDGE GEE: Hearing no objection, Joint Exhibits 1 through
18 7 are received.

19 **(Joint Exhibit Number 1 through 7 Received into Evidence)**

20 Let's now do opening statements. General Counsel, could I
21 have your opening statement, please?

22 MS. CHONG: Good morning, Your Honor. At issue here are
23 Independent Section 8(a)(1) violations committed by Respondent,
24 Starbucks, at three different Seattle store locations. In each
25 location, Respondent interrogated its employees about their

1 strike activity. Charging Party, Workers United, filed
2 petitions with the Board for elections at Respondent's 5th &
3 Pike store on January 25, 2022, Respondent's Westlake Drive
4 Thru store on January 25, 2022, and Respondent's 505 Union
5 Station store on March 16, 2022. This store closed on July 31,
6 2022.

7 The Board subsequently certified the Union as the
8 exclusive collective bargaining representative of the employees
9 of Respondent's 5th & Pike store and 505 Union Station store.
10 The units are comprised of the stores' baristas and shift
11 supervisors. During the organizing drives leading up to the
12 elections at these locations, Respondent's unit employees went
13 on strike on a number of occasions in protest of Respondent's
14 alleged unfair labor practice conduct during their organizing.
15 They sent management at each location a strike notice letter
16 prior to each strike, identifying who would be going on strike
17 so responded would know which positions would be absent.

18 Despite receiving these letters, management immediately
19 and persistently contacted its unit employees and employees
20 interrogating them about whether they intended to work. Their
21 interrogations not only served to intimidate and harass the
22 employees, but it also both explicitly and implicitly sought to
23 ascertain whether the employees intended to honor the strike or
24 cross the picket line. Respondent came at it using different
25 communication devices but always sought the same information.

1 At the 5th & Pike store, Store Manager, Jeremiah Mackler, both
2 called and texted employees during three separate strikes;
3 April 14, June 24, and July 14, 2022. His district manager,
4 Amy Quesenberry, was also on one of those calls.

5 At the Westlake Drive Thru store, both the district
6 manager and the assistant store manager, Brendan Branson,
7 called and texted their employees. District manager, Thai Le
8 Douglas, called employees on May 23, and June 25, 2022, and ASM
9 Branson both called and texted employees on June 25, 2022.
10 Finally, Area of Operations Coach, Kim Davis, called
11 Respondent's 505 Union Station store's employees about the July
12 14, 2022 strike notice.

13 As stated, there's no dispute that strike notices were
14 sent for each of these described strikes, and these notices
15 included the names of those planning to strike. That did not
16 prevent the interrogations. And what Respondent failed to do
17 in making its many intimidating and harassing inquiries, was to
18 provide the necessary assurances against reprisals, as required
19 under well settled Board law. Counsel for the General Counsel
20 requests that you find Respondent violated Section 8(a)(1) of
21 the Act, as alleged, and award the requested relief, including
22 postings and readings of the notice to employees and
23 explanation of rights to all employees at the 5th & Pike and
24 Westlake Drive Thru stores and mailings to the employees who
25 worked at the 505 Union Station store.

1 Counsel for the General Counsel is ready to proceed.

2 JUDGE GEE: Thank you. Ms. Multhaup, does the Charging
3 Party wish to present its own opening statement or defer to the
4 General Counsel's?

5 MS. MULTHAUP: Very briefly.

6 JUDGE GEE: Go ahead, please.

7 MS. MULTHAUP: Thank you. Your Honor, from the Union's
8 point of view, striking is at the heart of what constitutes
9 protected activity, and specifically, the workers' ability to
10 legally strike without interference or intimidation is the
11 basic compromise at the core of the Act. That was why when
12 Starbucks started surveying its workers, who are on strike,
13 asking whether they would come in, whether they wanted hours,
14 where they were, the -- the Union felt that it needed to
15 protect the rights of workers to strike without that type of
16 intimidation or interference.

17 The Union contends that Starbucks' activities violate
18 Section 8(a)(1), because to an objective worker, it would seem
19 obvious that Starbucks was trying to interrogate, ascertain
20 information about who was striking, when they were striking,
21 intimidate workers out of striking. And these workers, for
22 many of them, this was their -- their first strike, you know,
23 so Starbucks' actions in this situation carried a lot of
24 weights.

25 And for those reasons, the Union respectfully requests

1 that you find that Starbucks violated Section 8(a)(1) of the
2 Act.

3 JUDGE GEE: All right. Thank you. And Mr. Frondorf,
4 is -- I believe that Respondent will hold his opening statement
5 until the commencement of his defense?

6 MR. BECK: Judge, I'll actually be giving the opening
7 statement for Respondent. But you are correct. We will be
8 reserving that until following Counsel for General Counsel's
9 case-in-chief.

10 JUDGE GEE: All right. Thank you very much.
11 General Counsel, would you like to call your first witness
12 please?

13 MS. CHONG: Yes, Your Honor. I'd like to call Sarah
14 Pappin.

15 JUDGE GEE: Okay. We could please raise your right hand
16 and swear or affirm.
17 Whereupon,

18 **SARAH PAPPIN**

19 having been duly sworn, was called as a witness herein and was
20 examined and testified as follows:

21 JUDGE GEE: Will you have a seat, please? State your name
22 for the record and then spell it.

23 THE WITNESS: My name is Sarah Pappin, S-A-R-A-H
24 P-A-P-P-I-N.

25 JUDGE GEE: Okay, General Counsel, go ahead, please.



DIRECT EXAMINATION

1

2 Q BY MS. CHONG: Hello, Ms. Pappin. Are you employed by
3 Starbucks?

4 A I am.

5 Q How long have you been employed there?

6 A I've worked for Starbucks for nine and a half years.

7 Q Did you work at the same location the entire time?

8 A I've worked in a few locations over the years.

9 Q Which locations have you worked?

10 A I worked at 6th & Union for six years and then it closed,
11 and during the pandemic, I worked at several drive thrus.
12 Those were Elliott Drive Thru, Ballard Drive Thru and 120th &
13 Lake City Way, and then when 5th & Pike opened in September,
14 I -- of 2020, I went there and been there since.

15 Q What is your current position at Starbucks?

16 A Shift supervisor.

17 Q Has that been your position the entire time you've worked
18 at 5th & Pike?

19 A Yes.

20 Q And what are your general duties?

21 A My duties as a shift supervisor are to first and foremost
22 be cash controller. So I'm in charge of all the cash that's
23 out on the floor every day. I'm in charge of deploying
24 baristas. So running the floor, telling people what tasks to
25 do when, in charge of various inventory duties, like receiving

1 orders and placing orders and then just generally knowing what
2 the stores goals at any given time are and helping to execute
3 them.

4 Q And about how many employees work at Fifth & Pike?

5 A It varies, but usually somewhere between 15 and 20.

6 Q Who do you report to?

7 A I currently report to Jeremy Strickland.

8 Q Let's Jeremy Strickland's position store manager.

9 Q And has Mr. Strickland been the -- been your manager the
10 entire time you've been employed at 5th & Pike?

11 A No, we've had several managers.

12 Q Okay. Who else have you reported to?

13 A Before Jeremy, I reported to Christie Ferguson and Steven
14 Button, who were co-store managers. And before them was Jer --
15 short for Jeremiah Mackler. And before that was Taylor
16 Pringle.

17 Q When did you report to Jeremiah Mackler?

18 A He started managing the store in the fall of 2021 and
19 stayed until, I believe, August of 2020.

20 Q Do you know who Mr. Metha reported to?

21 A He reported at first to District Manager Amy Quesenberry
22 and then later District Manager Ryan. I'm blanking on Ryan's
23 last name. I -- I apologize.

24 Q And about what time period did he report to Ms.
25 Quesenberry?

1 A From when he took over in the fall of 2021 and until Amy
2 transitioned out of being the district manager, which, I
3 believe, was in June of 2022.

4 Q Was there ever a petition filed for representation by
5 Workers United at 5th & Pike?

6 A There was.

7 Q When was that?

8 A January 25th, 2022.

9 Q What was the outcome of that petition?

10 A It was a unanimous victory for the Union.

11 Q I want to turn your attention to the events that followed
12 the filing of the petition for an election. Were there any
13 strikes at the 5th & Pike location after the filing of the
14 petition?

15 A Yes.

16 Q About how many?

17 A There have been eight strikes that 5th & Pike has taken
18 place. Take --

19 Q When did they occur?

20 A Sorry. Taken part in.

21 Q When did they occur?

22 A The first one was in April of 2022. The second was June
23 2022. The third was July 2022. The fourth was September 2022.
24 The fifth was November 2022. Sixth was November 2022. Seventh
25 was December 2022. And the eighth was March of 2023.

1 Q Do you recall taking part in any of the strikes?

2 A I took part in all of the strikes.

3 Q Let's talk about the first strike in April of 2022. When
4 exactly was that strike?

5 A We were on strike from the 15th, 16th, and 17th.

6 Q Who participated in that?

7 A All of the hourly workers at 5th & Pike.

8 Q What led you to strike?

9 A We had, since our petition had been filed, been going
10 through a lot of what we felt were unfair labor practices,
11 harassment by management. We also experienced significant,
12 like, cuts in our hours and understaffing. And that time of
13 the year is when we get busy with the conventions usually and
14 there was a convention coming up that we knew about. And
15 knowing that we would be understaffed, we went and protest.

16 Q And what does it mean to strike or protest?

17 A To strike is to not work your scheduled hourly shifts.
18 And protest is usually when we are picketing outside.

19 Q Leading up to that first strike, are you aware of anyone
20 providing management notice about the plan to strike?

21 A Yes.

22 Q Who provided that notice?

23 A I did.

24 Q How did you provide it?

25 A I sent a text and an email to both Jer and Amy.



1 Q Jer, meaning Jeremiah Mackler?

2 A Correct.

3 Q Okay. When did you send the notice?

4 A I sent it shortly before the opening workers would have
5 started on the 15th, so sometime around 4:30 a.m.

6 Q And what did you say?

7 A I sent a copy of our strike notice, and I believe a short
8 message that said we -- the workers will be on strike these
9 days. Please see this notice for details.

10 Q Is that what was stated both in text and email?

11 A I believe I copy pasted it, so it was exactly the same.

12 Q Okay.

13 MS. CHONG: Your Honor, May I approach the witness?

14 JUDGE GEE: Please do. And you just have standing
15 permission to -- to approach.

16 Q BY MS. CHONG: Ms. Pappin, I would like to show you what's
17 been marked for identification and entered into evidence as
18 Joint Exhibit 2. Do you recognize the document?

19 A I do.

20 Q What is it?

21 A This is the strike notice that I sent Jer and Amy on the
22 15th.

23 Q Did you hear from either Mr. Mackler or Ms. Quesenberry
24 after you sent them the -- the notice?

25 A I did.

1 Q When?

2 A Amy called me immediately after sending the notice, like,
3 a couple of minutes later.

4 Q Did you talk to her?

5 A I didn't answer the phone.

6 Q How do you know she called?

7 A I had her number still in front of me from putting it in
8 to send the text message.

9 Q Did Ms. Quesenberry leave you a message?

10 A She did not.

11 Q And did you hear anything from Mr. Mackler?

12 A Yes. Later in the morning, while we were picketing, Jer
13 called me. I -- I didn't answer, but he did leave a voice
14 mail.

15 Q Okay. What did he say in the voice mail?

16 A He said that he wants to talk about hours and operations
17 for the week and asked me to call him back.

18 MS. CHONG: Okay. I would like to mark for
19 identification, General Counsel Exhibit 2.

20 **(General Counsel Exhibit Number 2 Marked for Identification)**

21 Q BY MS. CHONG: Ms. Pappin, do you recognize this document?

22 A I do.

23 Q What is it?

24 A It is a screenshot of the iPhone transcription with the
25 voice mail that Jer left.

1 Q Okay. I do see the transcription does say Jeff, but at
2 the top is Jer -- Jeremiah Mackler?

3 A Yes. It's the iPhone misunderstanding what Jer has stated
4 his name was.

5 MS. CHONG: Your Honor, I also do have the recording or
6 the voice mail recording. I'm wondering how you would like,
7 if -- if this transcription is sufficient for Respondent's
8 counsel, or if you would like me to play it so that we can
9 compare it?

10 JUDGE GEE: Let's just see if there's any objection.

11 MR. FRONDORF: We have no objection to this. We don't
12 need to listen to the voice mail.

13 JUDGE GEE: Thank you.

14 MS. CHONG: Okay.

15 JUDGE GEE: And -- and do all parties agree that Jeff is
16 actually Jer?

17 MS. MULTHAUP: Agreed.

18 JUDGE GEE: Okay.

19 MR. FRONDORF: We can agree to that.

20 JUDGE GEE: Thank you.

21 MS. CHONG: And I'd like to move for the admission of
22 General Counsel 2.

23 JUDGE GEE: Any objection?

24 MS. MULTHAUP: No objection.

25 MR. FRONDORF: No objection or Respondent.

1 JUDGE GEE: Hearing no objection, GC-2 is entered.

2 **(General Counsel Exhibit Number 2 Received into Evidence)**

3 Q BY MS. CHONG: Do you know, Ms. Pappin, if other employees
4 also received calls after notice of strike was sent?

5 A Yes.

6 Q How do you know?

7 A When we were picketing was when Jer was calling people,
8 and so my coworkers were getting calls while we were together
9 and discussing and asked me if they needed to answer or call
10 him back.

11 Q Do you know if anyone called Mr. Mackley -- I'm sorry,
12 Mackler back?

13 A I do.

14 Q How do you know?

15 A At one point during the picket, I was sitting in one of my
16 coworkers' car with him and another coworker, and they decided
17 to call Jer back.

18 Q And who were these individuals?

19 A That would be Hope Kim and Josh Nagy.

20 Q What are their -- what were their positions?

21 A Hope was a barista. Josh was a shift supervisor.

22 Q And whose car were you in?

23 A Josh's car?

24 Q About when was this?

25 A It was during the picketing and after Jer called, so I

1 would believe it was probably around 9 or 10 a.m.

2 JUDGE GEE: All right. General Counsel, before you
3 proceed, let me just make sure I got the spellings right.

4 MS. CHONG: Oh.

5 JUDGE GEE: Hope Kim is H-O-P-E K-I-M?

6 THE WITNESS: Correct.

7 JUDGE GEE: And this gentleman's name is it Jeff Maggie?

8 THE WITNESS: Josh Nagy, Joshua, Nagy is N-A-G-Y.

9 JUDGE GEE: Okay. Yeah. Go ahead, please.

10 MS. CHONG: Okay.

11 Q BY MS. CHONG: What happened in the car?

12 A Hope wanted to call Jer back, and so she put her phone on
13 speakerphone and then call Jer.

14 Q And did Mr. Mackler answer?

15 A He did.

16 Q How do you know?

17 A It was on speakerphone, so I heard the entire
18 conversation.

19 Q How did the call start?

20 A Jer greeted Hope and thanked her for calling him back, and
21 then he said that he needed to --

22 MR. FRONDORF: Objection. Hearsay.

23 MS. CHONG: Your Honor, that's --

24 JUDGE GEE: How so?

25 MR. FRONDORF: It's an out of court statement, or is she

1 offering it for the truth of the matter? Why -- why are we
2 hearing this?

3 JUDGE GEE: General Counsel, go ahead.

4 MS. CHONG: Your Honor, Jeremiah Mackler is a -- a
5 stipulated 2(11) and this is a statement by party opponent.

6 JUDGE GEE: Okay. So it technically doesn't count as
7 hearsay. So overruled.

8 JUDGE GEE: Go ahead.

9 Q BY MS. CHONG: Please proceed.

10 A So Jer greeted and thanked -- greeted Hope, thanked her
11 for calling him back, and then stated that he need to go get
12 Amy. And then the line was quiet for a while. And then Jer
13 came back and said that he had Amy. Amy greeted Hope and asked
14 Hope if she was at home, which Hope said no. Amy then asked if
15 Hope planned to work her scheduled shifts for that weekend, and
16 Hope said no. And Amy said that that was what they needed to
17 know and ended the call.

18 Q And Amy is Amy Quesenberry.

19 A Correct.

20 Q Okay. What happened next?

21 A We sat in Josh's car for a while longer and Josh decided
22 that he wanted to also call.

23 Q Who did he call?

24 A He called Jer.

25 Q Okay. And did Mr. Mackler respond or pick up the phone?

1 A He did.

2 Q Did you hear the conversation?

3 A I did. Josh put his phone on speakerphone.

4 Q Okay. Did you make it known that you were -- you were --
5 you and Mr. Nagy were listening?

6 A I did not.

7 Q What happened next?

8 A Jer answered call and said that he needed to go get Amy.
9 And the line was quiet for a while. He came back and said that
10 he couldn't get ahold of Amy, but that basically what he needed
11 to know was if Josh was going to work has scheduled shifts that
12 weekend.

13 Q What happened next?

14 JUDGE GEE: Wait. Wait. Wait. Let me ask a couple
15 questions.

16 About how far were you from -- from Mr. Nagy with this
17 call occurred?

18 THE WITNESS: He was in the front driver's seat, and I was
19 in the front passenger seat.

20 JUDGE GEE: I see. So if you wanted to, you could reach
21 out with your left hand and touch them.

22 THE WITNESS: Yes.

23 JUDGE GEE: So within a few feet.

24 THE WITNESS: Uh-huh.

25 JUDGE GEE: And as opposed to a summary, do you recall

1 what Mr. Mackler said? I think he said something to the fact
2 of --

3 THE WITNESS: Yeah.

4 JUDGE GEE: -- but do you -- do you happen to recall the
5 words? And if you don't, that's fine.

6 THE WITNESS: I have a pretty specific recollection of the
7 words and they're pretty -- I -- I think I'm making them sounds
8 like they're summarized, but they're pretty close to just what
9 was actually said.

10 JUDGE GEE: Okay, would you -- would you say now what you
11 heard?

12 THE WITNESS: Yes.

13 JUDGE GEE: Please.

14 THE WITNESS: Yes. Can you clarify at what point you
15 would like me to start at?

16 JUDGE GEE: After the -- the greetings. Thank you for
17 calling back.

18 THE WITNESS: Jer said that -- he said, "I need to go get
19 Amy." And then when he came back, he said, "Okay, I couldn't
20 get a hold of Amy, but basically what I need to know is are you
21 going to work any of your scheduled shifts this weekend?"

22 JUDGE GEE: I see. And -- and then Mr. Nagy said what?

23 THE WITNESS: Josh said, "No."

24 JUDGE GEE: All right.

25 General Counsel, go ahead.

1 Q BY MS. CHONG: Mr. Pappin, was anything else said in that
2 conversation?

3 A Not that I recall.

4 Q How long did it last?

5 A It was maybe a couple minutes.

6 Q Did you speak during the call at all?

7 A I did not.

8 Q Did Ms. Quesenberry or Mr. Mackler know that you, Hope Kim
9 and -- we're also -- and Josh Nagy were on -- in the car
10 listening to the calls?

11 A I don't believe that they do, but I would have no way of
12 knowing for certain.

13 Q When was the next strike?

14 A The next strike was June 24 or June 25th, I believe.

15 JUDGE GEE: 2022?

16 THE WITNESS: 2022.

17 JUDGE GEE: Thank you. Go ahead, General Counsel.

18 Q BY MS. CHONG: Who participated in the strike?

19 A All of the hourly partners at 5th & Pike as well as hourly
20 partners from several other stores in Seattle.

21 Q Were you present?

22 A I was.

23 Q And what led you to strike this time?

24 A Starbucks had just announced that --

25 MR. FRONDORF: Objection.

1 JUDGE GEE: What's the objection?

2 MR. FRONDORF: Relevance.

3 JUDGE GEE: What is the relevance?

4 MS. CHONG: This background, Your Honor.

5 JUDGE GEE: But -- but how's it helpful in any way?

6 MS. CHONG: Just understanding and -- understanding the
7 context and time period of what was happening.

8 JUDGE GEE: Okay. Time period's going to be a separate
9 issue. But context, I'll let you ask one or two questions, but
10 really, it's unnecessary.

11 MS. CHONG: Okay.

12 Q BY MS. CHONG: And the he only question was what led you
13 to strike?

14 A Starbucks had announced the creation of new districts
15 where they were redistricting several stores, and all the
16 partners of those stores had --to reapply for their jobs, and
17 then Starbucks, transferring out a large number of those in a
18 way that we felt was anti-union. And so we went on a unfair
19 labor practice strike.

20 Q And leading up to that strike, are you aware of anyone
21 providing notice to management about the plan to strike?

22 A Yes.

23 Q Who provided that notice?

24 A I did.

25 Q What kind of notice did you provide?



1 A I sent a text and an email to Amy and Jer. Actually, I'm
2 sorry. That one, I might have just sent an email. I might not
3 have sent a text as well.

4 Q When did you do that?

5 A It was the night before, I believe around 10:00.

6 Q What did you say on the notice?

7 A I just sent them a copy of the strike notice.

8 Q Okay. I am going to be showing you what's been marked and
9 entered into evidence as Joint Exhibit 3. Do you recognize the
10 document?

11 A I do.

12 Q What is it?

13 A It is the notice of strike that I sent to Jer and Amy.
14 And for clarity on this one, actually, I believe this is when
15 there was -- this was in the middle of the transition between
16 district managers, so I sent it to Jer, Amy, Ryan Lassiter, who
17 was our new district manager, and Regional Director Nica Tovey,
18 just to make sure. I wasn't -- it was very unclear at that
19 time, which district manager was overseeing the store.

20 Q Did you hear from anyone in management after you sent them
21 this notice?

22 A Later that night, yes.

23 Q Who?

24 A Jer.

25 Q What happened?

1 A Jer sent me a text saying that he -- sorry, I'm having
2 trouble recalling the exact wording of this text.

3 Q Okay. So did you -- when did you say you received
4 communication?

5 A It was after I sent the notice, later that night. So it
6 was like around -- I think it was a little before midnight.

7 Q Do you recall when?

8 JUDGE GEE: Pardon me. But -- and this would be June
9 24th, 2022?

10 THE WITNESS: Correct.

11 JUDGE GEE: All right. Thank you. I'm sorry. Go ahead,
12 General Counsel.

13 Q BY MS. CHONG: Did you speak with Mr. Mackler?

14 A I did not.

15 Q Okay. And what did he say?

16 JUDGE GEE: Well, she -- well, she -- the witness
17 testified that she did not?

18 MS. CHONG: Oh, I'm sorry.

19 Q BY MS. CHONG: Do you know whether you received a text or
20 voice mail message from Mr. Mackler?

21 A I do.

22 Q And what -- which was it?

23 MR. FRONDORF: Objection. That was a compound question.
24 Which one was it?

25 JUDGE GEE: All right. Just rephrase, please?

1 MS. CHONG: Yes.

2 Q BY MS. CHONG: Did you receive a voice mail from Mr.
3 Mackler?

4 A No. Or yes, I did.

5 Q Okay. Okay. Did you listen to the voice mail message?

6 A I did.

7 Q Did you respond or call back?

8 A I did not.

9 Q What did he say?

10 A He said that he was -- essentially, he was asking if I was
11 planning to work that weekend.

12 Q Okay.

13 JUDGE GEE: Is that -- is that what you recall him say?

14 THE WITNESS: Yes.

15 MS. CHONG: I'd like to mark for identification as General
16 Counsel Exhibit 3.

17 JUDGE GEE: Pause. Pause. Pause, please General Counsel.
18 Did he say anything else that you recall.

19 THE WITNESS: I don't. I'm having trouble recalling in
20 this moment --

21 JUDGE GEE: You --

22 THE WITNESS: -- what exactly was said. I -- I apologize,
23 Your Honor. There was a lot of communication in that time
24 period, and they're all very similar, and I do get them jumbled
25 up.

1 JUDGE GEE: You're doing the right thing and simply asking
2 the -- answering the question as best you can, so I appreciate
3 that. Did he -- did he say anything about the reason why he
4 was asking?

5 THE WITNESS: I believe that he said that he had received
6 notice of the strike. But I may be thinking of the next strike
7 that we're about to talk about.

8 JUDGE GEE: Okay. So you do not recall with a high level
9 of certainty that he explained the reason for his call.

10 THE WITNESS: I -- I -- yeah. I -- not -- I don't feel
11 certain in this moment saying to a level of certainty that I
12 think is appropriate for the legal record.

13 JUDGE GEE: Thank you. That's very good. Okay, go ahead,
14 Ms. Chong.

15 MS. CHONG: Your Honor, I'd like to offer General Counsel
16 Exhibit 3.

17 **(General Counsel Exhibit Number 3 Marked for Identification)**

18 Q BY MS. CHONG: Ms. Pappin, do you recognize General
19 Counsel Exhibit 3?

20 A I do.

21 Q What is it?

22 A It is a screenshot of the voice mail that Jer left me,
23 including the iPhone-generated transcription of the voice mail.

24 Q And even though it says C-H-E-R, this would be Jeremiah
25 Mackler?

1 A Correct.

2 Q Okay.

3 MS. CHONG: I'd like to offer into evidence General
4 Counsel Exhibit 3.

5 JUDGE GEE: All right. Any objection?

6 MS. MULTHAUP: No objection, Your Honor.

7 MR. FRONDORF: No objection for Respondent.

8 JUDGE GEE: All right. And -- and the C-H-E-R would be
9 J-E-R. Is that right? General Counsel?

10 MS. CHONG: Yes, Your Honor.

11 JUDGE GEE: And let me ask the witness, so the words
12 after -- and it says, "If you are in a call, a meeting in the
13 morning at". As best you recall, were those the words that he
14 said?

15 THE WITNESS: No. I believe that the iPhone -- I believe
16 my recollection is that this part of the voice mail was pretty
17 mumbly, and so the iPhone is -- it's just, you know, a quickly-
18 generated transcription.

19 JUDGE GEE: Right.

20 THE WITNESS: I think -- my recollection is he said if you
21 are planning to call me in the morning. Something like that.

22 JUDGE GEE: Do you have that voice mail message --

23 MS. CHONG: Yes.

24 JUDGE GEE: -- on your phone?

25 THE WITNESS: I do. And --

1 JUDGE GEE: Let's go off record.

2 (Off the record at 11:33 a.m.)

3 JUDGE GEE: Let's go back. During the brief break, we
4 listened to the -- an audio recording of the voice mail
5 message. It is different from the iPhone transcription in
6 General Counsel 3, so the parties are going to confer during
7 the next break and reach a stipulation as to an accurate
8 transcription of what Mr. Mackler said. Okay. Any -- no
9 objection to General Counsel Exhibit 3?

10 MR. FRONDORF: With those qualifications, no.

11 JUDGE GEE: GC-3 is received.

12 **(General Counsel Exhibit Number 3 Received into Evidence)**

13 JUDGE GEE: Thank you. Go ahead.

14 **RESUMED DIRECT EXAMINATION**

15 Q BY MS. CHONG: So Ms. Pappin, did you hear anything --
16 anything from Ms. Quesenberry?

17 A No.

18 Q When was the next strike?

19 A The next strike was in July of 2022.

20 Q Who participated?

21 A All of the hourly partners at 5th & Pike as well as hourly
22 partners with several other Starbucks in Seattle.

23 Q Were you present?

24 A I was.

25 Q What led you to strike?



1 A Starbucks had recently announced the closure of several
2 union stores, and so we went on strike protesting those
3 closures.

4 Q And leading up to that third strike, are you aware of
5 anyone providing management notice about the planned strike?

6 A I am.

7 Q Who?

8 A My coworker, Andy Walker, provided the notice.

9 Q How do you know?

10 A We had discussed it beforehand, and I had provided him the
11 notice, like, the -- the actual strike notice to provide to
12 management.

13 Q And do you know whether Andy Walker sent it?

14 A I do?

15 Q How do you know?

16 A They confirmed to me that they had sent it.

17 Q What kind of notice --

18 JUDGE GEE: Pause. One sec. And -- and "they" is -- is
19 Andy Walker's preferred pronoun?

20 THE WITNESS: Correct.

21 JUDGE GEE: And so "they" refers to a single individual?

22 THE WITNESS: Correct.

23 JUDGE GEE: Okay. Go ahead, General Counsel.

24 Q BY MS. CHONG: What kind of notice did Andy Walker provide
25 to management, do you know?

1 A They sent Jer and at that time it was -- district manager
2 was Ryan Lassiter. I don't recall if they sent it via text or
3 email or both.

4 JUDGE GEE: Were you there when Andy Walker sent it?

5 THE WITNESS: Not physically, no.

6 JUDGE GEE: Okay. Go ahead.

7 Q BY MS. CHONG: How do you know that was sent?

8 A I asked Andy if -- to tell me when they sent it, and they
9 told me it was sent.

10 Q Do you know when it was sent?

11 A It was right after the closers left that night, so it
12 would have been around 9 p.m.

13 Q I'd like to show you what's been marked and entered into
14 evidence as Joint Exhibit 4.

15 JUDGE GEE: Joint exhibit?

16 MS. CHONG: Yes, Your Honor.

17 JUDGE GEE: Oh, okay.

18 Q BY MS. CHONG: Do you recognize this document?

19 A I do?

20 Q What is it?

21 A This is the strike notice that I sent to Andy for them to
22 send to management.

23 Q And did you hear from anyone in management after the
24 notice was sent?

25 A I did.

1 Q Who did you hear from?

2 A I heard from Jer.

3 Q When?

4 A It was the next morning, sometime around 8, I believe.

5 Q And what --

6 JUDGE GEE: General Counsel, pause one second. As I
7 recall, your -- your testimony that the next strike was in July
8 22nd. Maybe I misheard that. What -- what date was the third
9 strike?

10 THE WITNESS: It was mid-July, so --

11 JUDGE GEE: Mid-July, year 2022.

12 THE WITNESS: Correct, Your Honor.

13 JUDGE GEE: Okay, thank you.

14 Go ahead, General Counsel.

15 MS. CHONG: Okay.

16 Q BY MS. CHONG: What happened?

17 A Sorry, can you remind me --

18 Q Sure.

19 A -- or reask the question?

20 Q I'd asked you if you heard from anyone in management and
21 you said yes. Who did you hear from? I believe you said Mr.
22 Mackler. And I asked what happened?

23 A He sent me a text message saying that they had received
24 notice of a strike and to contact him if I wanted any hours to
25 work that weekend.

1 MS. CHONG: I am marking for identification as General
2 Counsel Exhibit 4.

3 **(General Counsel Exhibit Number 4 Marked for Identification)**

4 JUDGE GEE: Thank you.

5 Q BY MS. CHONG: Ms. Pappin, do you recognize this document?

6 A I do.

7 Q What is it?

8 A This is the text message. Sorry. This is a screenshot of
9 a text message that Jer sent me.

10 Q Did you respond back?

11 A I did not.

12 Q Did you hear from anyone else in management about the --
13 about the strike or hours that weekend?

14 A I did not.

15 Q Okay.

16 MS. CHONG: No further questions, Your Honor.

17 JUDGE GEE: Okay. Pause for a second.

18 MS. CHONG: Oh, I'm sorry. Did I not move it into
19 evidence? I intended to.

20 JUDGE GEE: All right. Any objection to the -- well,
21 I'm -- I'll take that as -- as you moving now. Any objection
22 to General Counsel 4, Ms. Multhaup?

23 MS. MULTHAUP: No objection.

24 JUDGE GEE: Mr. Frondorf?

25 MR. FRONDORF: No objection.

1 JUDGE GEE: All right. GC-4 is received.

2 **(General Counsel Exhibit Number 4 Received into Evidence)**

3 JUDGE GEE: General Counsel, you have no further questions
4 of this witness?

5 MS. CHONG: Correct, Your Honor.

6 JUDGE GEE: All right. Ms. Multhaup, do you have any
7 questions?

8 MS. MULTHAUP: No questions. Thank you.

9 JUDGE GEE: All right. Thank you. Mr. -- Mr. Frondorf.

10 MR. FRONDORF: I do. But first, I'd like to request the
11 Jencks material.

12 MS. CHONG: Yes, I will get them to you.

13 JUDGE GEE: And General Counsel, can you tell me
14 approximately how -- how many pages is this Jencks statement?

15 MS. CHONG: Your Honor, there are several statements. We
16 have several affidavits. I went ahead and copied the
17 unredacted as well as redacted versions, if you would like to
18 inspect in-camera. There are cases that are not related to
19 this, but I am providing those statements with redactions.

20 MR. GASTON: Okay. Yeah, I would like to and then Mr.
21 Frondorf, how many -- how many affidavits?

22 MS. CHONG: We have least -- I think we have about eight,
23 Your Honor.

24 JUDGE GEE: Okay. Can you take it apart. You got how
25 many pages?

1 MS. CHONG: About 45 pages, Your Honor.

2 JUDGE GEE: All right. Mr. Frondorf, 15 minutes okay?

3 MR. FRONDORF: 15 for 45 pages? Why don't we -- if Your
4 Honor is in the middle, why don't we first confer regarding
5 voice mail, and we can agree on a stipulation of that language
6 so that's in place? And then I'd like a half an hour at
7 minimum to review the eight -- eight affidavits.

8 JUDGE GEE: All right. I think, that's -- that's fair.
9 So General Counsel, let me ask you this. For -- for the
10 subsequent -- well -- we'll do that. We'll -- it's now
11 11:43 -- 44. We'll break until 12:20, and we'll combine this
12 with a lunch break, and then we'll return at 12:20 with -- for
13 the resumption of this testimony. Thank you. Let's go off
14 record, please.

15 (Off the record at 11:44 a.m.)

16 JUDGE GEE: It is now 12:43. We're back from an extended
17 break. My understanding is that there's some business to
18 address. And General Counsel, let me have you go first,
19 please.

20 MS. CHONG: Yes, Your Honor. With regard to GC Exhibit 3,
21 the parties, off the record, were able to agree to the more
22 accurate transcription, which reads as follows, "Hey, Sarah,
23 it's Jer," J-E-R. "I'm just calling to ask you if you are
24 planning to work tomorrow. If you are, then call Amy in the
25 morning at 253-301-8870. Thank you. Have a good night." And

1 with that, the parties agree that this is an accurate
2 transcription.

3 JUDGE GEE: All right, Ms. Multhaup, do you so stipulate?

4 MS. MULTHAUP: I so stipulate.

5 JUDGE GEE: And Mr. Frondorf, do you so stipulate?

6 MR. FRONDORF: We do.

7 JUDGE GEE: Thank you. With that, the stipulation over
8 the correction of GC Exhibit 3 is received.

9 **(General Counsel Exhibit Number 3 Received into Evidence)**

10 JUDGE GEE: Now, Mr. Frondorf, I understand there's
11 something you'd like to raise on the record.

12 MR. FRONDORF: Yes, Your Honor.

13 JUDGE GEE: Go ahead, please.

14 MR. FRONDORF: I would like to make a motion for
15 reconsideration of your order granting General Counsel's motion
16 to amend the complaint, as I believe it was predicated on false
17 information.

18 JUDGE GEE: All right. Just pause one second. Okay.
19 Please -- please proceed.

20 MR. FRONDORF: I would like to ask that the witness step
21 out.

22 JUDGE GEE: Ms. -- Oh, Ms. Pappin. Would -- could I ask
23 you to step out to the witness room, and then we'll come and
24 get you in a few minutes? Thank you.

25 MR. FRONDORF: Are you a witness?

1 UNIDENTIFIED SPEAKER: No.

2 MR. FRONDORF: Okay.

3 JUDGE GEE: Oh, just one second. Just give me one second.
4 Okay. Go ahead.

5 MR. FRONDORF: Okay. On July 27th, 2022, Ms. Pappin
6 executed an affidavit wherein she provided that both Jer and
7 Amy Queensberry, in her words, persistently called several of
8 other partners.

9 JUDGE GEE: Okay. Pause. Let me -- let me catch up with
10 you. And -- and I'm -- I'm going to guess you're referring to
11 one of the several affidavits?

12 MR. FRONDORF: It's the first one. Uh-huh.

13 JUDGE GEE: Okay.

14 MR. FRONDORF: The first on in my packet.

15 JUDGE GEE: Direct me to the right page.

16 MR. FRONDORF: Page 1.

17 JUDGE GEE: And what line?

18 MR. FRONDORF: 9.

19 JUDGE GEE: Just one second, please. Okay. Why don't you
20 read to me the pertinent sentence or two?

21 MR. FRONDORF: Sure. I'll begin with the paragraph
22 beginning on line 7. It reads, "Leading up to my store's first
23 round of strike activity in April 2022 after we sent management
24 strike letter identifying which of us will be going on strike,
25 Jer and our district manager, Amy Quesenberry (Amy)

1 persistently called several of those of us on the list to
2 harass us about whether we would be working during the strike
3 period." That sentence demonstrates knowledge of the claims
4 that the General Counsel is using to amend the complaint that
5 they had nearly an entire year ago.

6 JUDGE GEE: All right. General Counsel, do you want to
7 addresses this?

8 MS. CHONG: Yes, Your Honor. And if you continue on with
9 the affidavit, it states that, "Before or planned --

10 JUDGE GEE: Direct me to the page and line.

11 MS. CHONG: Yes, just right after Respondent's counsel
12 read at line 10 of the first page of the same affidavit.
13 "Before our planned strike, Jer called me and left me a voice
14 mail message letting me know he wanted to talk about operations
15 and hours for the weekend when our strike was scheduled. I did
16 not call Jer back." And Your Honor, consistent with Ms.
17 Pappin's testimony, there's no mention here following that that
18 Amy Quesenberry called in the car -- in the car phone call that
19 there was -- that there was a call from Amy Quesenberry, as
20 testified by Ms. Pappin. There's no inconsistency.

21 JUDGE GEE: I see. Mr. Frondorf?

22 MR. FRONDORF: That is a strange reading of this
23 affidavit, Your Honor. They have knowledge of Amy's
24 involvement -- alleged involvement in these communications.
25 They've had that knowledge for 12 months. They've sat on that

1 knowledge for 12 months and ambushed us three business days
2 before the hearing with adding a new allegation involving this
3 witness that they knew all along was hanging out in file.

4 JUDGE GEE: All right. Thank you. Your -- your request
5 is denied. Let's bring Ms. Pappin back.

6 (Pause)

7 JUDGE GEE: Ms. Pappin, just have a seat. Let me remind
8 you that you are still under oath. Bruce, we're -- we're still
9 on the record, right?

10 THE CLERK: Right.

11 JUDGE GEE: Mr. Frondorf, go ahead, please.

12 MR. FRONDORF: Thank you, Your Honor.

13 **CROSS-EXAMINATION**

14 Q BY MR. FRONDORF: Is it okay if I call you Sarah?

15 A Sarah's great.

16 Q Okay. Sarah, my name is Alex Frondorf, and I'm the
17 attorney for the Respondent, Starbucks. I'm going to ask you a
18 couple of questions regarding your testimony on the affidavits
19 that you submitted in this case. You previously testified that
20 at the 5th & Pike store, Jer, your store manager -- was your
21 store manager starting in the fall of 2021, correct?

22 A Correct.

23 Q And you would agree with me that you and Jer had regular
24 communications, both by phone and by text in the months and
25 weeks leading up to April 2022, correct?



1 A Yes. It is a little bit more complicated in that
2 particular time period, but generally, yes.

3 Q Okay. And you would agree that -- that you both exchanged
4 calls and text messages regarding staffing, correct?

5 A Sorry. Yes, but at that specific -- yes.

6 Q It's a -- it's a yes or no. Thank you.

7 A Yes. Sorry, I just -- I want to get the most accurate
8 information on the record. And that was normal before that
9 particular time period, but during that time period, it was
10 not.

11 Q And what time period are you referring to?

12 A Around March, Jer had asked me to not text message with
13 him outside of the store and only communicate inside of the
14 store.

15 JUDGE GEE: Is that March 2022?

16 THE WITNESS: Yes, correct.

17 Q BY MR. FRONDORF: But you -- you disagreed with that;
18 didn't you?

19 A I did.

20 Q Okay. And you wanted, in fact, more communication from
21 Jer; didn't you?

22 A I wanted to have the normal amount of communication that
23 we had had for all of the time that we worked together before
24 that period.

25 Q And in April of 2022, you were frustrated that Jer was not

1 calling or texting you more frequently with regard to staffing
2 concerns; is that correct?

3 A There had been an incident where he had not texted me
4 about --

5 Q Is that --

6 JUDGE GEE: Just answer the questions that you're asked.

7 Q MR. FRONDORF: Is that a yes?

8 A Thank you.

9 Q Is that yes?

10 A Yes.

11 Q Thank you. Do you recall submitting affidavits in this
12 case?

13 A I do.

14 Q Quite a number of them, too, right?

15 A Correct.

16 Q Do you recall how many?

17 A I believe, eight.

18 Q And what did you do to prepare for your testimony here
19 today?

20 A I spoke with the NLRB agent who's handling it.

21 Q And who is that?

22 A Angeline.

23 Q And when did you meet with her?

24 MS. CHONG: Objection. Relevance.

25 JUDGE GEE: What is the relevance?

1 MR. FRONDORF: Well, we're about to -- I'll withdraw the
2 question for the moment.

3 Q BY MR. FRONDORF: Okay. And did you review your
4 affidavits prior to testifying here this morning?

5 A I did.

6 Q Did you review all of them?

7 A I did not review all of them.

8 Q Which ones did you review?

9 A I reviewed the one that is specifically in regard to the
10 events that we've discussed today.

11 Q Which one is that? Can you tell me the date that
12 affidavit was executed?

13 A I don't remember the exact date, but it was after the July
14 strikes. So it would have been sometime after that.

15 Q Okay. Was it July 27th, 2022?

16 A That sounds approximately right.

17 MR. FRONDORF: Ms. Chong, do you have a second copy of
18 this affidavit that I could show the witness?

19 MS. CHONG: I have a redacted and -- I have an unredacted
20 in front of me, and I have the redacted versions in front of
21 you and Judge Gee.

22 MR. FRONDORF: Okay. Your Honor, if it's acceptable to
23 you, I could stand by the witness and ask her questions showing
24 this copy.

25 JUDGE GEE: Oh, well, let me -- let me just hand over --

1 MR. FRONDORF: You know, let me -- let me try a different
2 way first. I'll ask some questions, and then if I need to, I
3 can.

4 JUDGE GEE: Sure.

5 Q BY MR. FRONDORF: So do you recall signing an affidavit on
6 July 27th, 2022?

7 A Around the time sounds right, yeah.

8 Q And was it your understanding at the time you executed
9 that affidavit? That was under oath?

10 A Yes.

11 Q And you agreed to tell the whole truth, correct?

12 A Correct.

13 Q And did you do that?

14 A I believed that I had at the time.

15 Q Okay. And you're aware that you're under oath here this
16 morning.

17 A Yes.

18 Q This afternoon, rather.

19 A Correct.

20 Q And you're agreeing to tell the truth here as well,
21 correct?

22 A Correct.

23 Q Now, this morning, you testified that you received a text
24 message communication from Jer on July 15th, 2022. Do you
25 recall that?

1 A Yes.

2 (Counsel confer)

3 MR. FRONDORF: We've confused ourselves.

4 Q BY MR. FRONDORF: You -- you testified that you received a
5 text message from Jer on July 15th, 2022, correct?

6 A Yes.

7 Q Okay. And that's reflected in General Counsel's Exhibit
8 Number 4. Is that correct?

9 A Yes.

10 Q In your affidavit from July 27th, 2020, you indicate that
11 you received a phone call from Jer. But that's not correct, is
12 it?

13 A Correct.

14 Q Do you recall earlier testifying about a series of two
15 calls that were placed in Josh Nagly's (sic), car on or around
16 July 15th?

17 A I do.

18 Q And you testified that the occupants of the car including
19 yourself were Hope Kim and Josh Nagy. Is that correct?

20 A Correct.

21 Q Anyone else?

22 A No.

23 Q Okay. Do you recall that in your affidavit dated July
24 27th, 2022, you wrote that Alice Vala and Josh -- I said Alice
25 Vala, V-A-L-A, and Joshua Nagy sat in Josh's car, while Alice

1 and Josh called Jer back to see what he was asking. Do you
2 recall that?

3 A I do.

4 Q So which is it?

5 A It is what I testified to, that it was Hope Kim and Josh
6 Nagy.

7 Q So this -- this affidavit is not correct in that regard?

8 A Correct.

9 Q In that same affidavit -- did you write this affidavit?

10 A I -- I spoke with an NLRB agent who drafted it, and then
11 I -- I signed it.

12 Q Did you provide any edits to it?

13 A Not to this affidavit?

14 Q Okay. So the words in this document are the Board agent's
15 and not yours, is that correct?

16 A Correct.

17 MS. CHONG: Objection, Your Honor.

18 JUDGE GEE: Basis?

19 MS. CHONG: That's not what the -- what the witness
20 testified.

21 MR. FRONDORF: She testified she didn't draft it.

22 JUDGE GEE: Pause. Let me rule on the objection.
23 Overruled. Go ahead.

24 THE WITNESS: Can you --

25 Q BY MR. FRONDORF: Yeah. These aren't your words in this



1 affidavit, are they?

2 A They're -- I guess it depends on how you define it, but
3 they are the words that the Board agent wrote from what I said,
4 yes.

5 Q Thank you. Do you recall your affidavit stating that Jer
6 and our district manager, Amy Quesenberry, persistently called
7 several of those of us on -- to harass us?

8 A Yes.

9 Q Okay. Like the occupants of the car, and like the form of
10 communication on July 15th, this also is not true; is it?

11 A I think it's semantics.

12 Q Okay. But I'm asking you --

13 JUDGE GEE: I don't understand that. What do you mean?

14 A Well, I guess I don't understand the -- can you ask the
15 question more specifically and then maybe I will?

16 Q Sure. It's not accurate to say that Jer and Amy
17 "persistently" called you, is it?

18 A Oh, I see. I think it would depend on how you are
19 defining persistently, but I -- I see where your point is and I
20 think that would be correct.

21 Q The way I define persistently, is at least more than once,
22 in a given occasion, making a phone call. Persistently would
23 not be one phone call for one strike. Would you agree with
24 that?

25 A Yes. I think what I probably meant is that over the

1 course of several strikes, this happened persistently. Not
2 that I was speaking at one strike. This was persistent
3 communication.

4 Q Okay.

5 A I -- I can see why that was confusing, but --

6 Q Thank you. And it's also not true that those
7 communications were harassing, were they?

8 A I, again, I think it's how you define it, but --
9 It's your word and it's your affidavit. So --

10 THE WITNESS: Yeah.

11 JUDGE GEE: Let me ask you this --

12 THE WITNESS: Um-hum.

13 JUDGE GEE: What did you -- what did you mean?

14 THE WITNESS: I felt that they were harassing based off of
15 the reaction that my coworkers had to them and how sort of
16 threatening that they had seemed to receive them as, and that's
17 why I chose the word like harassment. Particularly after the
18 first strike where, you know, I felt like at that time they
19 should know that they didn't need to reach out to my coworkers
20 to ask them if they were -- if they were planning to work when
21 it's, you know, already been provided to them. So that's what
22 I think felt harassing to me and why I chose that word.

23 JUDGE GEE: Go ahead Mr. Frondorf.

24 Q BY MR. FRONDORF: Sarah, do you have the exhibits in front
25 of you? Okay. I'd like to draw your attention to General

1 Counsel's Exhibit 2, the transcription of the voice mail from
2 April 15th, 2022, General Counsel's Exhibit 3, the
3 transcription from the voice mail on June 24th, 2022, and
4 finally General Counsel's Exhibit 4, the text received on July
5 15th, 2022. Would you agree with me that --

6 A You want all three of them?

7 Q I do.

8 A Okay. Thank you.

9 Q Let me know when you're ready.

10 A Yeah. All right.

11 Q You would agree with me that there is no language within
12 the transcription or in the text that could be conceived as
13 harassing, correct?

14 MS. MULTHAUP: Objection, calls for speculation and it's
15 inconsistent with what the prior testimony.

16 JUDGE GEE: Well, you know what? Let's just do one at a
17 time. Let's start with General Counsel 2.

18 Q BY MR. FRONDORF: Why don't you get General Counsel 2 in
19 front of you? Is there anything about the words on that page
20 that you deem harassing?

21 A Not based on the words on the page.

22 Q Okay. How about Number 3, any words on that page?

23 A Nope.

24 Q And Number 4, any words on that page?

25 A No.

1 Q Okay. Did anyone tell you that they felt harassed?

2 A My coworkers had expressed that they were very anxious and
3 scared. They felt that if they didn't respond to these calls
4 that they could get in trouble. They didn't want to get
5 written up for missing work, they know that's a big deal. So
6 it was fear.

7 Q Okay. And no one was disciplined for participating in the
8 strike, were they?

9 MS. MULTHAUP: Objection, calls for speculation.

10 JUDGE GEE: She can tell if she knows. And if you don't
11 know, that's fine.

12 A I would say that I don't know.

13 Q BY MR. FRONDORF: Okay. Let me ask another way. Are you
14 aware of anyone being disciplined for participating in any of
15 the strikes at issue here -- April 15th, June 24th, or July
16 14th?

17 THE WITNESS: Can I ask you a question? Because I just
18 want to make sure if it's appropriate to answer. There's a
19 pending charge that I already testified in the hearing about
20 where one of my -- one of the pieces of that charge is we're
21 alleging that one of our coworkers was fired, but immediately
22 after a strike and we're alleging that, that was retaliation
23 for the strike. So if -- but I know we like to keep these
24 cases separate from each other and so I just --

25 MR. FRONDORF: I'm going to withdraw the question.

1 JUDGE GEE: Thank you.

2 THE WITNESS: Okay. Sorry. Thank you.

3 Q BY MR. FRONDORF: Do you have up there, what's been marked
4 Joint Exhibit Number 2? It's the notice of the April 15th
5 strike.

6 A Yes.

7 Q There are I think 17 names at the bottom of that
8 document -- of that letter. Do you see that?

9 A Yes.

10 Q Okay. Now, did you draft this letter?

11 A I -- I helped draft this letter but I did not write the
12 bulk of it.

13 Q Okay. Who did?

14 MS. MULTHAUP: Objection, relevance.

15 JUDGE GEE: How is this relevant?

16 MR. FRONDORF: Well, there are words on this page, I want
17 to know how they got there.

18 JUDGE GEE: Sustained. Go ahead.

19 A It was --

20 JUDGE GEE: No sustained. Oh, Sorry.

21 THE WITNESS: I'm so sorry. Thank you.

22 JUDGE GEE: You don't need to answer who wrote this.

23 THE WITNESS: Sorry.

24 MR. FRONDORF: Okay.

25 Q BY MR. FRONDORF: So Sarah, earlier you testified that all

1 partners were participating in this strike on April 15th, 2022.

2 Do you recall to testifying that?

3 A Yes.

4 Q And were you are referring to the names on the bottom of
5 Joint Exhibit Number 2?

6 A Yes.

7 Q Okay. How did those names get onto this page?

8 MS. MULTHAUP: Objection, relevance.

9 MR. FRONDORF: She's testifying, but --

10 JUDGE GEE: Pause. Okay, what is the relevance?

11 MS. MULTHAUP: No I just wanted objection, I'm sorry. I'm
12 sorry.

13 JUDGE GEE: I'm sorry, what?

14 MS. MULTHAUP: Relevance and also calls for disclosure of
15 protected activity.

16 JUDGE GEE: I don't know about the second part but I am
17 concerned about the relevance.

18 MR. FRONDORF: What's true? Sure. Sure. Thanks. The
19 relevance is that she's saying that all of the names on here
20 wanted to participate in the strikes. I'm testing the veracity
21 of that testimony. I don't think it's true.

22 JUDGE GEE: But your question is, how does the name get on
23 the page.

24 MR. FRONDORF: Okay.

25 Q BY MR. FRONDORF: Sarah --



1 MR. FRONDORF: May I?

2 JUDGE GEE: Please.

3 Q BY MR. FRONDORF: Sarah, what steps did you take to verify
4 the accuracy of representation that the names on this page
5 wanted to participate in the strike?

6 MS. MULTHAUP: Objection, relevance.

7 MS. CHONG: Same objection, Your Honor. It does reveal --
8 it will reveal protected activity which is inappropriate.

9 JUDGE GEE: Okay. Thank you, General Counsel. What is
10 the relevance?

11 MR. FRONDORF: The relevance is exactly as the General
12 Counsel stated it. In her opening argument, she said "This
13 document identifies who will be going on a strike." And as a
14 result, we have no basis to call these people because we
15 allegedly had knowledge that they were striking. I don't
16 believe that to be true. And I would like to test the veracity
17 of that statement.

18 JUDGE GEE: I will let you ask a few questions.

19 MR. FRONDORF: Thank you.

20 Q BY MR. FRONDORF: What steps did you undertake to
21 ascertain the names that appear on Joint Exhibit 2 actually
22 wanted to strike?

23 A Everybody whose name is on this paper is somebody who said
24 that they wanted their name on the strike notice.

25 Q And when you say, "said that they wanted their notice" who

1 did they say that to?

2 MS. MULTHAUP: Objec --

3 JUDGE GEE: Yeah. It's sustained. Please move on.

4 MR. FRONDORF: Did they say -- may I ask if there's --
5 this is what I believe to be the heart of General Counsel's
6 case.

7 JUDGE GEE: You may ask a question.

8 Q BY MR. FRONDORF: Would it surprise you to learn that not
9 all the names on this list, in fact, wanted to strike?

10 MS. MULTHAUP: Objection, calls for speculation and
11 assumes specs not in evidence.

12 JUDGE GEE: What is the relevance?

13 MR. FRONDORF: Once again, General Counsel's opening
14 statement, that we knew the identity of those who had gone on
15 strike and therefore had no basis to call them.

16 MS. CHONG: Your Honor --

17 MR. FRONDORF: That comes out of this document.

18 MS. MULTHAUP: I would also argue that --

19 JUDGE GEE: Let Mr. Frondorf finish, please. Go ahead.

20 MS. CHONG: I thought he was finished.

21 MR. FRONDORF: The evidence in support of that contention,
22 that the names that appear on this page, if there is no effort
23 to verify the accuracy of that, that means that we were
24 justified in not relying on this and calling everyone to say,
25 are you coming in today. That's it.

1 JUDGE GEE: General Counsel?

2 MS. CHONG: I believe it goes beyond the scope of Ms.
3 Pappin's direct testimony.

4 MR. FRONDORF: This is the heart of their case.

5 JUDGE GEE: It's sustained. The objection is sustained.

6 Q BY MR. FRONDORF: Is it your contention that everyone on
7 this list wanted to strike?

8 MS. MULTHAUP: Objection, relevance.

9 MR. FRONDORF: Well, it's the contention of the General
10 Counsel. I want to know if it's the contention of the witness.

11 JUDGE GEE: Sustained.

12 MR. FRONDORF: Can I make a proffer of evidence.

13 JUDGE GEE: Yes. Yes, you may.

14 MR. FRONDORF: May I inquire with the witness then? You
15 can exclude the evidence but I would like Ms. Pappin to appear
16 on the transcript.

17 JUDGE GEE: Let's go question by question. What I'm
18 concerned about is the inadvertent disclosure of section 7,
19 communications and section 7, activity that's not germane to
20 this case. So let's go question by question.

21 MS. MULTHAUP: Thank you, Your Honor.

22 Q BY MR. FRONDORF: So Sarah, without telling me who you
23 spoke to, without telling me their names, did you speak to all
24 of the employees on this strike notice and ask them if they
25 intended to strike or go to work?

1 MS. MULTHAUP: Your Honor, I don't know if you want me to
2 object question by question, but I strongly object to this line
3 of questioning.

4 MR. FRONDORF: I'm not asking names.

5 MS. MULTHAUP: Still, it reveals, you know -- potentially
6 reveals protected activity and I firmly believe it's not -- not
7 relevant.

8 JUDGE GEE: Let me ask you this. For General -- excuse
9 me -- Joint Exhibit 2, are you the person who wrote down the
10 names at the bottom of the page?

11 THE WITNESS: No. I was involved with drafting this but
12 that was not something that I specifically did.

13 JUDGE GEE: So with regard to the listing of the names at
14 the bottom of Joint Exhibit 2, did you tell the drafter of this
15 document who should be named?

16 THE WITNESS: Yes. It was one of my -- sorry. Trying to
17 figure out how to --

18 JUDGE GEE: Just answer the question.

19 THE WITNESS: Yeah. Okay. Yes.

20 JUDGE GEE: Did you tell the drafter what names should be
21 on there?

22 THE WITNESS: I told them to include the name of everybody
23 who wanted to be it. And I told them which -- the names of the
24 people that I had discussed with, who had told me. But there
25 was several people who were having those conversations and so

1 it was communicated to the person who wrote it who wanted to
2 have their name on the letter.

3 JUDGE GEE: And did you identify every single one of these
4 individuals or did coworkers indicate certain individuals?

5 THE WITNESS: The second one.

6 JUDGE GEE: Okay. So you suggested a certain number of
7 names. Another coworker suggested other names.

8 THE WITNESS: Correct.

9 JUDGE GEE: All right. Go ahead. Ask your next question.

10 Q BY MR. FRONDORF: How far in advance of this letter being
11 written did those conversations generally take place?

12 MS. MULTHAUP: Objection, relevance.

13 JUDGE GEE: Go ahead. Answer that question.

14 A Can you specify generally did these conversations take
15 place for this one or for --

16 Q For this one. We're sticking with Joint Exhibit Number 2.

17 A Great. It was anywhere from when we first voted to go on
18 strike, which I believe was about a week before this letter was
19 submitted to up to the night before.

20 Q I don't want a name or an identity. Did anyone come up to
21 you or are you aware of anyone who wanted their name taken off
22 of this letter? Just yes or no.

23 A No.

24 Q So you, as you sit here today yourself, do not have
25 firsthand knowledge that every name on this page wanted to

1 strike, correct?

2 A It --

3 Q Yes or no.

4 A Can I clarify?

5 Q Say yes or no.

6 MS. MULTHAUP: If the witness can't answer the question in
7 an yes or no then she has to be able to --

8 MR. FRONDORF: It's important --

9 JUDGE GEE: Pause. Just one person speak at a time. This
10 isn't about you getting trapped. Just answer as best you can
11 right now.

12 THE WITNESS: Yes. I'm sorry. I just wanted to clarify
13 the question.

14 MR. FRONDORF: Do you want me to re-ask the question?

15 THE WITNESS: Please.

16 Q BY MR. FRONDORF: The names that are before you in Joint
17 Exhibit 2, as you sit here today, you do not have firsthand
18 knowledge that every one of those names wanted to strike,
19 correct?

20 A I know that all of the names that are in front of me are
21 people who voted to go on strike.

22 Q My question --

23 MS. MULTHAUP: I'm going to object because, Your Honor,
24 this is exactly why this line --

25 JUDGE GEE: Yeah.

1 MS. MULTHAUP: -- of questioning is --

2 JUDGE GEE: Okay. All right. Let me ask the question.
3 You didn't speak to everyone. You did not directly speak to
4 every one of these individuals; is that right?

5 THE WITNESS: Correct.

6 JUDGE GEE: And so not every -- not each and every
7 individual listed here informed you directly that they wanted
8 to strike; is that correct?

9 THE WITNESS: Well, if I may, Your Honor, the reason I'm
10 getting confused is because there's two separate issues here
11 which is, did they want to go on strike and did they want their
12 name on the letter.

13 JUDGE GEE: Okay. Just the strike question then.

14 THE WITNESS: Everybody whose name is on this letter, I'm
15 aware of wanted to go on strike.

16 JUDGE GEE: But they -- Respondent's Counsel's question
17 is, every one of these people didn't tell you directly; is that
18 correct?

19 THE WITNESS: I -- sorry I'm trying to remember if that's
20 not -- so just give me one second. Sorry it's just confusing
21 because there's two different kind of events that took place
22 that are about people wanted to go on strike verses people who
23 wanted their name on the letter and they were -- they happened
24 differently and I just want to make sure I'm testifying
25 accurately to what --

1 JUDGE GEE: Okay. Let me clarify something with you, Mr.
2 Frondorf. Are you asking about the strike or are you asking
3 participation having their name affixed to the letter?

4 MR. FRONDORF: I'm not really interested in their name
5 being affixed to this letter. I'm interested in the knowledge
6 who on or whoever it is, I don't need names, people wanted to
7 go out on strike on April 15 and not work that day. What's the
8 strength of that evidence that we are hearing? What's the
9 basis for it? What is the foundation for it?

10 JUDGE GEE: And what's the relevance of this?

11 MR. FRONDORF: Because if it's on shaky ground, then the
12 contention by the General Counsel that Starbucks somehow had
13 ironclad evidence that these people were not, in fact, coming
14 to work, doesn't hold water.

15 MS. MULTHAUP: Your Honor, if that was the case then he
16 would only be interested in whose names were on the letter.

17 JUDGE GEE: I've already sustained this -- these questions
18 to the extent that they reveal confidential section 7 activity.
19 So I would ask you, Mr. Frondorf, let's proceed please.

20 Q BY MR. FRONDORF: Okay. So the record was clear though,
21 those signatures on Joint Exhibit 2, correct?

22 A Correct.

23 MR. FRONDORF: Okay. Nothing further, Your Honor.

24 JUDGE GEE: Okay. General Counsel?

25 MS. CHONG: Yes, redirect, please.

1 JUDGE GEE: Yeah, proceed.

2 **REDIRECT EXAMINATION**

3 Q BY MS. CHONG: Ms. Pappin, I'll have you look at Joint
4 Exhibit 2 and just ask whether that was the entirety of the
5 voice mail message that you heard from Jeremiah Mackler on
6 April 15th?

7 MR. FRONDORF: Objection, asked and answered.

8 JUDGE GEE: I'd like to know. Go ahead. Answer that
9 question.

10 THE WITNESS: So this is General Counsel's?

11 JUDGE GEE: Let me ask the question, the voice mail
12 message from Mr. Mackler on April 15th, 2022, that was only 11
13 seconds; is that correct?

14 THE WITNESS: Correct.

15 JUDGE GEE: And the words we have on the page from "hey"
16 through "bye" are the entirety of that voice mail message; is
17 that correct?

18 THE WITNESS: Correct.

19 JUDGE GEE: All right. Go ahead, General Counsel.

20 Q BY MS. CHONG: And same with General Counsel's Exhibit 3,
21 was that the entirety of the voice mail message from Jeremiah
22 Mackler on June 24, 2022?

23 A Yes.

24 Q Okay. And for the text message on July 15, was that the
25 entirety of the text message you received from Jeremiah Mackler

1 on that date?

2 A Yes.

3 Q Okay. And let's go back to the conversation in the car --
4 in Joshua Nagly's (sic) car. Can you explain, why in your
5 affidavit for this matter, Alices' name is on there?

6 A Yes. So there was the time that I've already testified to
7 where I was in the car with Josh and Hope. Later in the
8 morning, my coworker Alice Vala came to picket line -- or
9 sorry. She was already at the picket line. But she had
10 realized that she had left her phone in the store before we had
11 gone out on strike and wanted to use Josh's phone to call Jer,
12 so that she could see if she could arrange to get into the
13 store somehow to get her phone, which I think also had like her
14 I.D. in it or something. And so at that point, we went and sat
15 in Josh's car. And it was a very similar setup with the three
16 of us sitting in the car together and she used Josh's phone to
17 call Jer and talk to him. So I just -- I had misconstrued
18 those two events a little bit.

19 Q Okay. And that conversation with Alice in the car did not
20 involve the content you described earlier in your testimony
21 involving Hope Kim, correct?

22 A Correct.

23 Q Okay. And as far as the description in your affidavit
24 that Respondent's Counsel read about Amy Quesenberry
25 persistently calling several of those of us, would you say

1 that's accurate, that she had persistently called several of
2 those of us on the list?

3 MR. FRONDORF: Objection

4 JUDGE GEE: Basis?

5 MR. FRONDORF: She's already testified when we went
6 through this.

7 JUDGE GEE: It calls for -- well perhaps on cross. But it
8 calls for hearsay. Why don't you rephrase, General Counsel?

9 MS. CHONG: Okay.

10 Q BY MS. CHONG: So my question to you is, can you clarify
11 what you mean by persistently calling, I guess Ms. Quesenberry
12 persistently calling, whether it was any individual or did you
13 mean employees as a whole? Can you explain what you meant by
14 that in your cross-exam?

15 MR. FRONDORF: Objection.

16 JUDGE GEE: What's your objection?

17 MR. FRONDORF: I read into the record that portion of her
18 affidavit and the words speak for themselves. The document
19 speaks for itself.

20 MS. CHONG: I don't know that you read the entire
21 sentence.

22 JUDGE GEE: I would just, General Counsel, how is this
23 relevant?

24 MS. CHONG: The witness can testify whether -- I disagree
25 that Respondent read the entire sentence. I believe he read

1 part of the sentence, which is why I want to put it in context
2 and have the witness explain what she actually meant by that
3 sentence.

4 JUDGE GEE: It's not -- it's simply not relevant.

5 MS. CHONG: Okay. I have no further questions.

6 JUDGE GEE: Ms. Multhaup?

7 MS. MULTHAUP: No questions.

8 JUDGE GEE: Mr. Frondorf?

9 MR. FRONDORF: Nothing further.

10 JUDGE GEE: All right, thank you. Thank you very much.
11 You're -- you're excused.

12 General Counsel, would you like to call your next witness?

13 MS. CHONG: Yes. I'd like to call Brent Hayes

14 JUDGE GEE: All right. Let's go off record and once you
15 get Brent Hayes -- Mr. Hayes.

16 (Off the record at 11:22 a.m.)

17 JUDGE GEE: General Counsel, would you like to call your
18 next witness?

19 MS. CHONG: Yes, Your Honor. I'm calling Brent Hayes.

20 JUDGE GEE: Okay. Mr. Hayes, would you kindly stand and
21 raise your right hand please? Do you swear and affirm that the
22 testimony you're about to give is the truth, the whole truth,
23 and nothing but the truth?

24 THE WITNESS: I do.

25 JUDGE GEE: Would you have a seat please, state your name

1 for the record and then spell it?

2 THE WITNESS: My name is Brent Hayes B-R-E-N-T H-A-Y-E-S.

3 JUDGE GEE: All right, General Counsel. Go ahead please.

4 **DIRECT EXAMINATION**

5 Q BY MS. CHONG: Hello, there. Are you employed by
6 Starbucks?

7 A Not presently.

8 Q Were your ever employed by Starbucks?

9 A Yes.

10 Q When did you work there?

11 A I began my career at Starbucks in October of 2019 and
12 ended it in late April of 2023.

13 Q At what location or locations did you work?

14 A I started working at Starbucks at the 7th and Westlake
15 location and was transferred to the 1200 Westlake Avenue
16 location the Westlake drive thru.

17 Q When did you begin working at Westlake drive thru?

18 A I was transferred to the Westlake drive thru in February
19 of 2021 following the pandemic.

20 Q What was your position at Starbucks?

21 A I started as a barista and was then promoted to shift
22 supervisor.

23 Q When were you promoted?

24 A I was promoted in October of last year.

25 Q And was that when you were at the Westlake drive thru



1 location?

2 A Yes.

3 Q I'd like to focus, from here on out, on the period of time
4 you worked at Westlake drive thru.

5 A Uh-huh.

6 Q What were your duties as barista?

7 A So as a barista, I maintained day-to-day store operations,
8 greeting customers, taking their order, making drinks, safely
9 handling food, and basic cleaning and cash handling.

10 Q And what about your duties as a shift supervisor?

11 A As a shift supervisor I was in charge of task delegation,
12 deploying employees in the correct places at the correct time,
13 managing breaks, some inventory sort of things, counting out
14 money, and safety things as a closer, such as making sure doors
15 were locked, things like that.

16 Q And about how many employees worked there when you were
17 there?

18 A The number fluctuated fairly often. It was usually around
19 20 people.

20 Q Who did you report to?

21 A Store management and assistant store management.

22 Q Can you provide names?

23 A Yes. Most recently I answered to Cindy -- I want to say
24 her last name is pronounced Roig and DJ Calabanza.

25 JUDGE GEE: All right. Can you do your best to spell both

1 last names?

2 THE WITNESS: Yes. Cindy C-I-N-D-Y R-O-I-G --

3 JUDGE GEE: Oh, I see. Okay. Go ahead --

4 THE WITNESS: -- I think.

5 JUDGE GEE: -- the second person?

6 THE WITNESS: And DJ -- just the letters D-J

7 C-A-L-A-B-A-N-Z-A. I think I have that correct.

8 JUDGE GEE: Spell the Calaba --

9 THE WITNESS: Calabanza.

10 JUDGE GEE: One more time for us.

11 THE WITNESS: C-A-L-A-B-A-N-Z-A.

12 JUDGE GEE: Thank you.

13 THE WITNESS: No problem.

14 JUDGE GEE: Okay. Go ahead, General Counsel.

15 Q BY MS. CHONG: And what were -- what was Cindy Roig's
16 position?

17 A Store manager?

18 Q What about DJ Calabanza?

19 A Assistant store manager.

20 Q And did you report to anyone else?

21 A During the time period I worked at that store, yes. We
22 went through a few managers. So there was, prior to Cindy, we
23 had Jess Andrews. And prior DJ as assistant manager, we had
24 Brendon Branson.

25 Q And do you know who the store managers reported to?

1 A District management.

2 Q Who is district management?

3 A Ryan Lassiter is the current district manager. Prior to
4 Ryan it was Thai Le Douglass.

5 Q Okay. Was there a petition filed for a presentation by
6 Worker's United at that store?

7 A Yes.

8 Q When?

9 A January 25th, I believe, of last year.

10 Q I want to turn your attention to the events that followed
11 the filing of the petition for an election. Were there any
12 strikes at the Westlake drive thru store after the filing of
13 the petition?

14 A Yes.

15 Q About how many?

16 A I don't have an exact number. We were -- we participated
17 in quite a handful. We probably, for the course of six months,
18 went on one or two strikes a month.

19 Q When did they occur?

20 A We -- as early as I remember, we had strikes May, June,
21 July -- those were some very heavy striking months for us last
22 year.

23 Q Did you take part in any of those strikes?

24 A Yes.

25 Q How many?

1 A As many as the Westlake drive thru went on, I was
2 participating in.

3 Q Okay. Let's talk about the first strike in May. Why did
4 they -- why did you go out on strike?

5 MR. BECK: Objection, relevance.

6 JUDGE GEE: What is the relevance?

7 MS. CHONG: This is background, Your Honor.

8 JUDGE GEE: It's intero -- is alleged interrogation going
9 to be about this -- the reason for the strike?

10 MS. CHONG: No, Your Honor.

11 JUDGE GEE: How is it helpful then?

12 MS. CHONG: I'm happy to move on.

13 JUDGE GEE: Would -- would you please?

14 MS. CHONG: Okay.

15 Q BY MS. CHONG: Did anyone in -- did anyone, as far as you
16 are aware, notify management about the strike?

17 A So far as I am aware, that strike would have been notified
18 by Aaron Meredith, and that's A-A-R-O-N, Meredith for that
19 particular strike.

20 Q Okay. Was -- how many were there in May?

21 A I remember one on I think it was May 15th. I think there
22 were probably -- I -- that's the only strike I distinctly
23 remember in May. It was a while ago.

24 Q Okay. Let's see. I'm going to show you --

25 A Uh-huh.

1 Q -- what's been marked for identification as Joint Exhibit
2 5.

3 A Uh-huh.

4 Q And I want you to take a look at --

5 A Oh --

6 Q -- that --

7 A -- it's the 23rd not the 15th. My --

8 Q Oh.

9 A -- apologies.

10 Q I want you to take a look at that and just look at the
11 bottom where there is a list of names. Is your name on there?

12 A It is.

13 Q Okay. And can you tell me, only if you know, who the "to"
14 line is and who the "from" line is?

15 A The "to" line reads to s02810@retail.starbucks.com, which
16 would be the store email for that location, so the store
17 manager and I believe assistant manager would have access to
18 that. And then, tle@starbucks.com, which I believe was Thai's
19 email, the district manager at the time.

20 Q Thai Douglas?

21 A Yes.

22 Q Okay. And do you recognize the email at the "from" line?

23 A Yes, that is the email of employee -- the former email of
24 employee Jael Storm (phonetic throughout), who at the time had
25 a different name.

1 Q Okay. All right, that's all I'm going to have you answer
2 for that.

3 A Uh-huh.

4 Q And did anyone in management speak with you about the
5 strike noted in Joint Exhibit 5?

6 A In the May strike? No, that was the only strike where I
7 was not scheduled to work that day.

8 Q Okay. Let's talk about the strike in June.

9 A Uh-huh.

10 Q When was that?

11 A June 25th? Late June for sure.

12 Q What happened that day?

13 A So we had discussed going on strike. By "we" I mean Jael,
14 myself, and a few other employees at the store because of
15 Starbucks' heritage district change. We felt that it was
16 unfair that Starbucks was relocating employees, so we chose to
17 notify management through email just the same as this one. I
18 was the one who drafted and sent that email to inform them that
19 we would not be working on the posted dates of the email, as
20 well as our answer -- the -- the unfair labor practice that we
21 were citing for that, so it was a ULP strike, and so we did not
22 show up to work that day.

23 Q Okay. So by not showing up to work, do you mean you were
24 present for the strike?

25 A Yes, I was present for the -- the strike would be

1 indicating we're not showing up to work. The picket would be
2 the protest part of it. I was present -- I -- I participated
3 in both.

4 Q Okay. And was -- and who in management was notified; do
5 you know?

6 A It would have been the store email and possibly Thai. I
7 don't remember if it was addressed to both.

8 Q How was he notified?

9 A Through email.

10 Q Okay. And when was it sent?

11 A Typically with emails like this, we either send them late
12 the night before or the morning of --

13 Q Okay.

14 A -- so.

15 Q And I'm going to put in front of you Joint Exhibit 6,
16 which has been marked and entered into evidence. Do you
17 recognize that document?

18 A I do.

19 Q What is it?

20 A This would be the notice of strike for June 25th.

21 Q Okay. So with that strike, is the email the same as what
22 was on Joint Exhibit 5, the email addresses?

23 A Yes, I -- I misspoke when I said I -- I had helped draft
24 the email.

25 Q Okay, and is your name on that notice of strike?

- 1 A Let me have a look on the second page. It is.
- 2 Q Okay. Did anyone in management contact you about that
- 3 strike?
- 4 A Yes.
- 5 Q Who?
- 6 A I was contacted by both Thai and Brendan Branson.
- 7 Q Okay. So let's talk about --
- 8 A Uh-huh.
- 9 Q -- Thai.
- 10 A Yeah.
- 11 Q How did Thai Douglas contact you?
- 12 A She had called me -- it was very early in the morning,
- 13 probably somewhere in the ballpark of 6 to 7 a.m. Thai had
- 14 called me, and I was a closer at that store, so I -- I was not
- 15 awake at the time, but her phone call had woken me up, so I did
- 16 contact her back.
- 17 Q Okay. So -- so how did you realize she had called?
- 18 A I had woken up to the --
- 19 Q Okay.
- 20 A -- the phone call -- the ring. There we go.
- 21 Q And you called back?
- 22 A Uh-huh.
- 23 Q Okay, when did you call back?
- 24 A I want to say it was shortly thereafter. It would've
- 25 still been during the morning.

1 Q And what did Ms. Douglas say?

2 A She just asked me if I was planning to participate in the
3 strike.

4 Q Did you respond?

5 A I did.

6 Q How?

7 A I informed her that I was indeed going to be on strike and
8 not at work that day.

9 Q And what, if anything, else did she say?

10 A So far as I remember, she told me she understood, to have
11 a nice day, and we both hung up.

12 MS. CHONG: Okay. I am marking for identification General
13 Counsel Exhibit 5.

14 **(General Counsel Exhibit Number 5 Marked for Identification)**

15 Q BY MS. CHONG: Do you recognize this document?

16 A I do.

17 Q What is it?

18 A So this is a screenshot from my phone showing the dates
19 and who was calling me that day.

20 Q Okay. And so "Thai" would be Thai Douglas?

21 A Yes, and so it goes from -- the call history goes from the
22 bottom was older and up at the top was the most recent for that
23 date.

24 Q Okay. So the -- so that white font --

25 A Uh-huh.

1 Q -- would indicate that you made the outgoing call?

2 A Yes, it indicates that a call was made. The little phone
3 icon next to it with the arrow shows that it is outgoing.

4 MS. CHONG: Okay. I'd like to offer General Counsel
5 Exhibit 5 into evidence.

6 JUDGE GEE: Ms. Multhaup?

7 MS. MULTHAUP: No objection.

8 JUDGE GEE: Mr. Beck?

9 MR. BECK: Your Honor, we don't necessar -- Your Honor, my
10 only concern with General Counsel Exhibit 5 is that it feels
11 like more information could be made available from the
12 screenshot. If we were to cla -- tap on the blue eye icon,
13 we'd be able to identify specific times these calls were made
14 or received, how long those calls lasted. Right now, all we
15 have are a series of words, a series of dates, and I -- I --
16 I'm not necessarily contesting the witness' recollection of the
17 order or anything like that, but it feels like there could be a
18 more complete version of General Counsel's Exhibit 5 entered
19 into the record that would help the factfinder determine the
20 merit of these calls. So in that sense, Your Honor, I guess,
21 yes, I do have an objection on the basis that the exhibit
22 appears incomplete.

23 JUDGE GEE: Would it be -- is -- is the word "incomplete"
24 there?

25 MR. BECK: Maybe not, Your Honor, but more information

1 could be available.

2 JUDGE GEE: All right. Note -- noting that objection, I'm
3 going to enter it into the record. Shows -- shows the placing
4 of the receive -- received two calls on the -- the making of
5 one outbound call on June 25th. We also have some testimony,
6 so it's received. GC 5 is received.

7 **(General Counsel Exhibit Number 5 Received into Evidence)**

8 Q BY MS. CHONG: Okay, Mr. Hayes --

9 A Uh-huh.

10 Q -- did anyone else in management contact you about the
11 June strike?

12 A Yes, you can also see that Brendan made an attempt to
13 contact me, as well.

14 Q Okay, and when was that?

15 A It was the same day as Thai. It looks like Brendan
16 probably tried to call me before her, but it was Thai's call
17 that I woke up to and responded to.

18 Q Okay. Did you call Brendan Branson back?

19 A No.

20 Q What happened next?

21 A Brendan Branson did send me a text asking if I --

22 Q Hold on.

23 A Hold on.

24 Q Just when was that?

25 A Oh, it was the same day, roughly the same time frame in

1 the morning.

2 Q And what did he say?

3 A He asked --

4 JUDGE GEE: Par -- pardon --

5 A -- me --

6 JUDGE GEE: -- are we going to see this text?

7 MS. CHONG: Yes, Your Honor. Typically, I -- I would have
8 the witness talk about it and then I'd present the document.

9 JUDGE GEE: Okay, it's -- it -- just a very little bit of
10 testimony, but I think we should see the document.

11 MS. CHONG: Okay.

12 Q BY MS. CHONG: All right, so just briefly, what did Mr.
13 Branson say?

14 A He asked me if I intended to strike and told me I had to
15 call the store if that was the case.

16 MS. CHONG: I have marked for identification is General
17 Counsel Exhibit 6.

18 **(General Counsel Exhibit Number 6 Marked for Identification)**

19 Q BY MS. CHONG: Do you recognize this document?

20 A Yes.

21 Q What is it?

22 A This is a screenshot which has the date and time stamp of
23 that exact conversation I just referenced.

24 Q Okay. Did you respond?

25 A I did.

1 Q How?

2 A I told him that I'd already spoken to Thai, which would
3 have been just after I called her.

4 MS. CHONG: Okay. I'd like to move General Counsel
5 Exhibit 6 into evidence.

6 JUDGE GEE: Any objection?

7 MS. MULTHAUP: No objection.

8 JUDGE GEE: Mr. Beck, any objection?

9 MR. BECK: No objection.

10 JUDGE GEE: Hearing no objection, GC 6 is received.

11 **(General Counsel Exhibit Number 6 Received into Evidence)**

12 Q BY MS. CHONG: Did you have any further exchange or
13 conversation with Mr. Branson regarding the strike?

14 A No.

15 MS. CHONG: Okay. No further questions.

16 JUDGE GEE: All right. Mr. Beck?

17 MR. BECK: Before proceeding to cross-examination, Your
18 Honor, we'd ask for any Jencks material.

19 JUDGE GEE: All right. General Counsel? Oh, the --

20 MR. BECK: And I guess --

21 JUDGE GEE: Oh, I'm --

22 MR. BECK: -- we'd be --

23 JUDGE GEE: -- I'm sorry. That's my -- my --

24 MR. BECK: -- provided --

25 JUDGE GEE: -- my apology. Ms. Multhaup?

1 MS. MULTHAUP: I'm sorry. No questions, Your Honor.

2 JUDGE GEE: Okay, thank you.

3 MR. BECK: Thanks for keeping me honest.

4 JUDGE GEE: All of us. Thank you. Let's go off record.

5 (Off the record at 1:46 p.m.)

6 JUDGE GEE: Mr. Beck, do you have questions for this
7 witness?

8 MR. BECK: I do.

9 JUDGE GEE: Pro -- proceed, please.

10 **CROSS-EXAMINATION**

11 Q BY MR. BECK: Good afternoon. May I call you Brent?

12 A Yeah.

13 Q Brent, my name is Ian Beck. I'm one of the attorneys
14 representing the Respondent Starbucks. I've just got a few
15 questions for --

16 A Uh-huh.

17 Q -- you. My first question: Do you recall preparing
18 the -- the affidavit that was provided to us in conjunction
19 with this case?

20 A Yeah, I remember, you know, being over the phone providing
21 the affidavit, all of that.

22 Q Do you remember when about you had the -- the phone
23 conversation where you provided the information that ended up
24 in this affidavit?

25 A I don't have the exact date of when I did that. It's



1 probably in the affidavit, but I don't --

2 Q Okay.

3 A -- distinctly remember.

4 Q Do you recall, did it happen in the last couple of weeks
5 or was it more closely related in time to the strike
6 activity --

7 A Oh, much --

8 Q -- in June?

9 A -- more closely related to the strike activity.

10 Q Okay. Do you recall when after that phone conversation
11 you may have received the actual word or -- or document that
12 contained the language of the affidavit?

13 A It was sent back to me in an email, I believe.

14 Q Okay. After you got an email, did you review the -- the
15 words that were prepared in the affidavit based on the phone
16 call you had?

17 A Yeah.

18 Q Okay. And did they appear to be accurate to you when you
19 reviewed them?

20 A Yes. Any edits that I made, I sent back.

21 Q Okay. And then after making those edits, did you review
22 an additional time to confirm that the edited version was fully
23 accurate?

24 A With someone or just like reading through it on my --

25 Q At all?

1 A Yeah.

2 Q Okay. And do you recall that when you prepared the
3 affidavit you were under oath?

4 A Yes.

5 Q Okay. And you recall initialing each page of the
6 affidavit and signing it after you reviewed and confirmed it?

7 A Yep.

8 JUDGE GEE: Ac -- actually, pause just one second.

9 THE WITNESS: Uh-huh.

10 JUDGE GEE: When you -- when you intend to signal "yes",
11 would you kindly just use the word "yes" as opposed --

12 THE WITNESS: Sorry.

13 JUDGE GEE: -- to "yep" or words like that?

14 THE WITNESS: Yep, no pro -- or yes, sorry.

15 JUDGE GEE: Thank you. It -- it -- it really doesn't make
16 a difference, but it is -- it's tidier if you'd do that.

17 THE WITNESS: No problem at all.

18 JUDGE GEE: Thank you.

19 Q BY MR. BECK: So Brent, I -- I'd -- I'd like to read from
20 you -- or read a line from the affidavit to you and -- and just
21 ask if it -- it strikes you as accurate based on the testimony
22 we've heard. So on page 2 of the affidavit that is dated July
23 27th, 2022, beginning on line 20, it reads, "However", for most
24 of our recent strike -- "for our most recent strike on July
25 15th, 2022, I sent notice to our store manager and district

1 manager by email dated July 14th, 2022" period. Do you recall
2 after reviewing the joint exhibits that were presented to you,
3 did you actually send the notice of strike to store management
4 in July?

5 A For the July strike, I sent the notice.

6 Q Okay.

7 JUDGE GEE: Mr. Beck, could -- could you repeat the -- the
8 page and line, please?

9 MS. CHONG: Yeah.

10 MR. BECK: Of -- of the affidavit, Your Honor?

11 JUDGE GEE: Yes.

12 MR. BECK: That was page 2, line 20 and 21.

13 MS. CHONG: Oh, Your Honor, may I please object. I wasn't
14 quite following where he was reading from because I thought it
15 was about the strikes that we just heard from Brent Hayes
16 about, and that's beyond the scope of direct.

17 JUDGE GEE: All right. Mr. Beck, it -- it does appear to
18 be beyond the scope of direct.

19 MR. BECK: Your Honor, I sincerely apologize. You're
20 absolutely correct. I'm getting my strike dates out of order.

21 MS. MULTHAUP: Me, too.

22 MR. BECK: Apologies for that, Brent.

23 THE WITNESS: It's okay.

24 Q BY MR. BECK: So in that case, do you have copies of the
25 General Counsel's exhibits in front of you there?

- 1 A Yes.
- 2 Q Okay. Could I have you refer to General Counsel Exhibit
- 3 5, which is the -- the --
- 4 A Uh-huh.
- 5 Q -- screenshot of the three phone calls made --
- 6 A Yes.
- 7 Q -- on June 25th? Okay. I just wanted to confirm, so best
- 8 of your recollection, you received a call from Brendan Branson
- 9 sometime early in the morning --
- 10 A Uh-huh.
- 11 Q -- on June 25th, 2022?
- 12 A Uh-huh.
- 13 Q You --
- 14 JUDGE GEE: That'd be a "yes"?
- 15 THE WITNESS: Oh, yes. Sorry.
- 16 Q BY MR. BECK: You didn't answer that call?
- 17 A No.
- 18 Q And you did not call Brendan back?
- 19 A No.
- 20 Q Okay. Did Brendan leave a voice mail?
- 21 A No.
- 22 Q Okay. And then, you later in that morning received a call
- 23 from Thai Douglas?
- 24 A Yes.
- 25 Q And I think your testimony was that that call woke you up?

- 1 A Yes.
- 2 Q And so you were able to call Thai back?
- 3 A Yes.
- 4 Q Was there any time in the interim where Thai left a --
- 5 left you a voice mail?
- 6 A No.
- 7 Q When you spoke with Thai on the phone, do you recall about
- 8 how long that conversation lasted?
- 9 A Maybe a minute. It was not a very long call.
- 10 Q And I believe your testimony was that Thai asked you if
- 11 you intended on participating in the strike; is that right?
- 12 A Yes.
- 13 Q And you informed Thai that you did intend to participate?
- 14 A Yes.
- 15 Q And I believe I understood that your testimony was that
- 16 Thai responded, okay, understood. Have a nice day. Thank you.
- 17 A Yes.
- 18 Q Was there anything else exchanged between either of you
- 19 over the course of that phone call?
- 20 A No.
- 21 Q Brent, do you remember when you prepared the screenshot
- 22 that's reflected in -- in General Counsel Exhibit 5?
- 23 A It would have been when I was speaking with the person who
- 24 wrote up my affidavit. It would have been around that time.
- 25 Q Okay, so -- and if I represented to you that the affidavit

1 is dated July 27, 2022, would it seem accurate to you that you
2 identified this screenshot sometime around then?

3 MS. CHONG: Objection, Your Honor. That's actually not
4 what the date says on this affidavit.

5 MR. BECK: Ms. Chong, I'm reading directly from the --

6 JUDGE GEE: Would just --

7 MR. BECK: -- top of the document you handed me.

8 MS. CHONG: Oh, I'm looking at the signature line.

9 JUDGE GEE: Mr. -- Mr. Beck, just as a -- a courtesy,
10 would you direct your comments to me?

11 MR. BECK: Yes, of course, Your Honor. I apologize --

12 JUDGE GEE: Yeah, that's all right.

13 MR. BECK: -- and -- and thank you. I -- I will convey my
14 thanks to General Counsel for correcting me that the date on
15 the final page is August 4th.

16 JUDGE GEE: Thank you.

17 MR. BECK: So I'll withdraw my question and ask another
18 one.

19 Q BY MR. BECK: Brent, would it sound accurate that you
20 prepared the screenshot in General Counsel Exhibit 5 sometime
21 in August of 2022?

22 A Yes.

23 Q Do you know as you -- as you testify today, Brent, whether
24 or not the -- the information reflected in the screenshot would
25 still exist on your cell phone today?

1 A It would not. I've gotten a new phone since then.

2 Q Okay, thank you.

3 A Uh-huh.

4 Q All right, and then could I direct your attention to
5 General Counsel Exhibit 6?

6 A Okay.

7 Q That would be the screenshot of text messages between you
8 and Brendan Branson.

9 A Uh-huh.

10 Q Other than the text message that's 6:45 a.m. on June 25th,
11 did you receive any other text communications from Brendan
12 Branson relating to the strike that weekend?

13 A No.

14 Q Okay. And you responded back at 8:20 saying that you -- I
15 talked to Thai directly?

16 A Yes.

17 Q And then, the -- is the thumbs-up on the left of that blue
18 bubble an indication that Brendan then liked your response to
19 him?

20 A Yes.

21 Q Okay. Did you and Brendan have any further communication
22 regarding the strike that weekend?

23 A Not that I can recall.

24 Q Did you return to work following the -- the end period of
25 the strike?

1 A Yes.

2 Q Okay. Did you ever receive any discipline for
3 participating in the strike?

4 A No.

5 Q Any corrective action of any form?

6 A No.

7 Q Are you aware if you were ever assigned an unexcused
8 absence for the dates that the strike occurred?

9 A No.

10 Q Do you recall, Brent, were you scheduled to work on
11 Saturday, June 25th, 2022?

12 A I believe so, yes, because otherwise, he wouldn't have
13 contacted me to ask me directly if I'd be at work that day.

14 Q Okay. So it was your understanding that Brendan was
15 reaching out because you were -- you were then scheduled to
16 work that day?

17 A Yes.

18 MS. CHONG: Objection, Your Honor.

19 JUDGE GEE: Well, the -- the --

20 MS. CHONG: I -- I realize --

21 JUDGE GEE: -- the -- the question was already --

22 MS. CHONG: -- the question was already --

23 JUDGE GEE: -- answered.

24 MS. CHONG: -- answered. Please give me a second before
25 you answer the question.

1 JUDGE GEE: I'm sorry, what was the objection?

2 MS. CHONG: Give me a second now. Oh, it calls for
3 speculation because Respondent's counsel asked about what
4 Brent -- Brendan Branson's intention was.

5 JUDGE GEE: Oh, I see. All right. Go ahead. I'm sorry,
6 Mr. Beck, go ahead.

7 MR. BECK: Are you asking for a response to the objection
8 or are you --

9 JUDGE GEE: Well, I think we don't need -- it --

10 MR. BECK: Okay.

11 JUDGE GEE: -- it's moot. The -- the question was
12 answered.

13 MR. BECK: Just -- just confirming. Thank you.

14 Q BY MR. BECK: Brent, as shift supervisor, are you aware of
15 the policies in the Starbucks partner guide?

16 A Yes.

17 Q Okay. Are you aware that there is a policy regarding
18 attendance?

19 A Yes.

20 Q Does the attendance policy require that if a partner is
21 not going to appear for a scheduled shift, the general practice
22 is to call the store and notify management of their absence?

23 MS. MULTHAUP: Ob -- ob -- objection. Calls for the
24 witness to testify about a -- a -- a Starbucks policy that the
25 witness, you know, isn't an expert on.

1 MR. BECK: Your Honor --

2 JUDGE GEE: No -- no need. Go ahead and answer the
3 question.

4 MR. BECK: Did you --

5 THE WITNESS: Could you repeat it?

6 MR. BECK: Of course.

7 Q BY MR. BECK: So are you aware that the time-and-
8 attendance pol -- or the attendance policy requires that if a
9 partner is going to be absent for a scheduled shift, general
10 practice is to call the store and notify management that they
11 won't be able to attend that shift?

12 A General practice, so far as I executed it, was to either
13 call the store or contact your manager directly since
14 frequently supervisors also would answer the phone.

15 Q Okay, and so that -- that's how you executed that policy?

16 A Yes.

17 MR. BECK: Okay, perfect. I've got nothing further, Your
18 Honor.

19 JUDGE GEE: Okay.

20 MR. BECK: Oh. I -- I do, and if you wouldn't mind, Your
21 Honor, I -- can I rescind that and ask two or three more
22 follow-up questions?

23 JUDGE GEE: Of course.

24 MR. BECK: Thank you for your lenience, and Brent, thank
25 you for bearing with me here.

1 THE WITNESS: Uh-huh.

2 Q BY MR. BECK: As shift supervisor, are you generally aware
3 of schedules that are prepared and -- and issued for partners
4 at the Westlake drive-thru store?

5 MS. MULTHAUP: Objection. Relevance.

6 JUDGE GEE: What is the relevance?

7 MR. BECK: Your Honor, thi -- this is going to whether or
8 not Brent is aware of the importance or need for staffing a
9 store in order to keep it operational as a shift supervisor.

10 JUDGE GEE: All right. Why don't you just ask it again,
11 please?

12 MR. BECK: Sure.

13 Q BY MR. BECK: Brent, are you aware as a shift supervisor
14 about scheduling needs for the Westlake drive-thru?

15 A Yes.

16 Q Are you aware whether or not there's a minimum number of
17 partners who would be needed in order to keep the Westlake
18 drive-thru store operational at any given time?

19 A Yes.

20 Q Are you -- give me just one moment.

21 A Uh-huh.

22 JUDGE GEE: Wha -- what is that number?

23 THE WITNESS: Two.

24 JUDGE GEE: I see.

25 MR. BECK: In that case, Your Honor, now I have no further

1 questions. Thank you.

2 JUDGE GEE: Thank you. General Counsel?

3 MS. CHONG: No redirect, Your Honor.

4 JUDGE GEE: Anything of the --

5 MS. MULTHAUP: No questions.

6 JUDGE GEE: Okay. Well, that's it. Okay, thank -- thank
7 you so much.

8 THE WITNESS: That's not a problem. Should I leave these
9 up here?

10 MS. CHONG: Yes.

11 THE WITNESS: Okay, perfect. Here you go.

12 JUDGE GEE: General Counsel, would you like to call your
13 next witness?

14 MS. CHONG: Yes, I'd like to call Jameson Hart.

15 JUDGE GEE: Jameson Hart, and would you please bring in
16 mi -- Mr. or Ms. Hart?

17 (Counsel confer)

18 JUDGE GEE: All right. Let's go off record.

19 (Off the record at 2:07 p.m.)

20 JUDGE GEE: General Counsel, who's your next witness?

21 MS. CHONG: Yes. Your Honor, I'm calling Jameson Hart to
22 the stand.

23 JUDGE GEE: Thank you. Ms. Hart, would you stand and face
24 me?

25 Whereupon,



JAMESON "ROWAN" HART

having been duly sworn, was called as a witness herein and was examined and testified as follows:

JUDGE GEE: State your name for the record and then spell it. You have a seat, please.

THE WITNESS: Cool. It's Rowan Hart, R-O-W-A-N H-A-R-T.

JUDGE GEE: All right, and do you go by the name Jameson?

THE WITNESS: Yes.

JUDGE GEE: I see. And Jameson is spelled J-A-M-I-S-O-N?

THE WITNESS: J-A-M-E-S-O-N.

JUDGE GEE: Hart is spelled how again?

THE WITNESS: H-A-R-T.

JUDGE GEE: Okay, thank you. Go ahead, General Counsel.

DIRECT EXAMINATION

Q BY MS. CHONG: Good afternoon. What are your pronouns?

A He/they.

Q Thank you. Are you employed by Starbucks?

A No.

Q Have you ever been employed there?

A Yes.

Q How long?

A For four-and-a-half years.

Q At what location or locations did you work?

A I worked at Pier 55, Magnolia, Holman Road, 505 Union, and University Way.

1 Q Okay, and 505 Union, would that be 505 Union Station?

2 A Yes.

3 Q Okay. When did you work there?

4 A I worked there from February of 2022 until the end of July
5 of 2022.

6 Q What was your position at Starbucks?

7 A Barista.

8 Q Were you in that position the entire time?

9 A Yes.

10 Q What were your general duties?

11 A Serving coffee, cleaning, and doing repair.

12 Q About how many employees worked at the 505 Union Station
13 store when you worked there?

14 A I believe about 17.

15 Q Who did you report to?

16 A My supervisors were Erin Bray and Mari Cosgrove and my
17 manager was Evan Vancoweaver.

18 JUDGE GEE: Could you spell those names for us, please?

19 THE WITNESS: Erin Bray, E-R-I-N, B-R-A-Y, and Mari,
20 M-A-R-I C-O-S-G-R-O-V-E, and then, Evan, E-V-A-N, and I believe
21 her last name is spelled V-A-N-C-O-W-E-A-V-E-R.

22 JUDGE GEE: v -- spell Van --

23 THE WITNESS: Vancoweaver.

24 JUDGE GEE: Yeah, once again, please.

25 THE WITNESS: V -



1 JUDGE GEE: V-A-N --

2 THE WITNESS: C-O-W-E-A-V-E-R.

3 JUDGE GEE: I see. Okay. And do you go by Rowan or
4 Jameson?

5 THE WITNESS: Jameson.

6 JUDGE GEE: And if I were ref -- to refer to you only by
7 your surname, would I say Ms. Hart?

8 THE WITNESS: Yes.

9 JUDGE GEE: Thank you. Oh, go ahead, General Counsel.

10 Q BY MS. CHONG: Was there ever a petition filed for
11 representation by Workers United at the 505 Union Station
12 store?

13 A Yes.

14 Q When?

15 A I believe about March --

16 Q Of --

17 A -- of 2022.

18 Q What was the outcome of that petition?

19 A We unionized.

20 Q I want to turn your attention to the events that followed
21 the filing of the petition for an election. Were there any
22 strikes at that store after the filing?

23 A Yes.

24 Q About how many?

25 A I believe at least one every month up until the end of

1 July.

2 Q Okay. Do you recall taking part in any strikes?

3 A Yes.

4 Q How many did you take part in?

5 A Most of them, including the ones in July.

6 Q And what did it mean to go on strike?

7 A Going on strike means to protest the actions of a
8 workplace against their workers in something that we believe is
9 unfair or unjust.

10 Q I'm going to turn your attention to the strike in July.
11 Did you take part in that strike?

12 A Yes, I did.

13 Q Why did you go on strike?

14 A We went on strike because we were given notice that our
15 store would be closing at the end of July.

16 Q Okay. When did you get notice?

17 A I believe we got notice at the beginning of July.

18 Q How did you get it?

19 A We received it --

20 MR. FRONDORF: Objection. Relevance.

21 JUDGE GEE: Let -- let -- let me -- let me clarify
22 something. This is July 2022?

23 MS. CHONG: Uh-huh.

24 JUDGE GEE: General Counsel?

25 MS. CHONG: Yes, Your Honor. This -- this is background

1 information about -- about the reason for the employees to go
2 on strike.

3 JUDGE GEE: Okay, that objection is what?

4 MR. FRONDORF: It was -- it's the same objection that's
5 been sustained previously which is this background information
6 simply isn't relevant.

7 JUDGE GEE: And is there going to be any connection
8 between the reason for the strike with in -- the interrogation
9 allegation?

10 MS. CHONG: No, Your Honor.

11 JUDGE GEE: Okay, I'll go ahead and sustain that. I -- I
12 believe previously General Counsel withdrew that question, but
13 go ahead.

14 MR. FRONDORF: Thank you.

15 Q BY MS. CHONG: Okay --

16 JUDGE GEE: Go ahead.

17 Q BY MS. CHONG: -- so let's talk about the strike itself.
18 When did that take place, if you remember?

19 A I believe it took place from the middle of July.

20 Q And who participated?

21 A Myself, Erin Bray, Mari Cosgrove, and most of our
22 coworkers.

23 Q And once the strike began, did you hear from anyone in
24 management?

25 A Yes, I did.

1 Q When?

2 A The day after we went on strike, I was called by a woman
3 named Kim Davis.

4 Q How do you know that?

5 A She introduced herself over the phone as such.

6 Q So that means you picked up the call?

7 A Yes.

8 Q Okay. And what did she say when you picked up the call?

9 A She asked when the strike was going to be over and when we
10 were going to come back to work.

11 Q Did you respond?

12 A Yes.

13 Q How.

14 A I told her, I don't know.

15 Q Okay. Did she say anything further?

16 A No.

17 Q What happened next?

18 JUDGE GEE: Let me ask a few questions. I apologize. How
19 do you know it was Kim Davis?

20 THE WITNESS: She introduced herself over the phone as Kim
21 Davis.

22 JUDGE GEE: And did she refer to a title?

23 THE WITNESS: If she did, I don't recall. But I do recall
24 that she worked for Starbucks Corporate.

25 JUDGE GEE: And how do you know that?

1 THE WITNESS: Because she told me as much.

2 JUDGE GEE: So during that call, she introduced herself
3 as someone who worked for Starbucks Corporate?

4 THE WITNESS: Yes, Your Honor.

5 JUDGE GEE: All right. Go ahead, General Counsel.

6 Q BY MS. CHONG: Just to follow up on that, did she provide
7 her title, or just Starbucks corporate?

8 A I believe she did, but I can't recall it.

9 Q Okay. So the question that I left with before that was
10 whether Ms. Davis said anything further.

11 A No.

12 Q And what happened next?

13 A I hung up.

14 Q Okay.

15 MS. CHONG: I'd like to mark for identification General
16 Counsel Exhibit 7.

17 **(General Counsel Exhibit Number 7 Marked for Identification)**

18 Q BY MS. CHONG: Do you recognize this document?

19 A Yes, I do.

20 Q What is it?

21 A It is the first phone call I received from Kim Davis.

22 Q Okay. How do you know that?

23 A Because I took a screenshot when she called me.

24 Q Okay.

25 MS. CHONG: I would like to offer General Counsel 7 into

1 evidence.

2 JUDGE GEE: Any objection?

3 MS. MARTY: No objection.

4 JUDGE GEE: Mr. Frondorf?

5 MR. FRONDORF: This document has no date on it. I'm going
6 to object because it appears to be incomplete. My experience
7 with such screenshots is there's normally -- there's a time,
8 but there's no date.

9 JUDGE GEE: General Counsel, could I have you address
10 that, please?

11 MS. CHONG: Sure, Your Honor. I don't know -- I'm not
12 familiar with what I think is an Android device, but I --

13 THE WITNESS: It is a OnePlus 7T, and as such it does not
14 display the date at the top of the screen.

15 JUDGE GEE: All right. And it's your testimony that you
16 took this screenshot at the same time you were speaking to, I
17 think it is, Kim Davis?

18 THE WITNESS: Yes.

19 JUDGE GEE: All right. And it's your testimony that this
20 was sometime in mid-July?

21 THE WITNESS: Yes.

22 JUDGE GEE: All right. I will receive GC-7.

23 **(General Counsel Exhibit Number 7 Received into Evidence)**

24 Q BY MS. CHONG: And when you describe this as the first
25 time she called, does that mean there were other calls?

- 1 A Yes. She called me twice the next day.
- 2 Q The next day? Okay. When exactly did she call?
- 3 A She called me about mid-afternoon.
- 4 Q How do you know?
- 5 A Because I recognized the number that she had called from
- 6 the day previously.
- 7 Q Did you pick up the phone?
- 8 A No, I did not,
- 9 Q For either call?
- 10 A No.
- 11 Q Did you ever talk with Ms. Davis again?
- 12 A No.
- 13 Q Did she leave you any voice mail messages?
- 14 A No.
- 15 MS. CHONG: No further questions, Your Honor.
- 16 JUDGE GEE: All right. Ms. Multhaup?
- 17 MS. MULTHAUP: No questions. Thank you.
- 18 JUDGE GEE: Thank you.
- 19 Mr. Frondorf?
- 20 MR. FRONDORF: Do you have Jencks material, please?
- 21 MS. CHONG: There are none, Your Honor.
- 22 MR. FRONDORF: All right. Okay. In that case, may I just
- 23 have -- I can probably -- two minutes?
- 24 JUDGE GEE: That's fine. Let's go off record.
- 25 MR. FRONDORF: Thank you.

1 (Off the record at 2:19 p.m.)

2 JUDGE GEE: We are back on record.

3 Mr. Frondorf, does Respondent have cross-examination for
4 this witness?

5 MR. FRONDORF: We do.

6 JUDGE GEE: Proceed, please.

7 MR. FRONDORF: Thank you.

8 **CROSS-EXAMINATION**

9 Q BY MR. FRONDORF: May I call you Jameson?

10 A Um-hum.

11 Q Thank you. My name is Alex Frondorf, and I'm attorney for
12 Respondent Starbucks. I'm just going to ask you a few
13 questions. Is that okay?

14 A Um-hum.

15 Q You testified that you participated in the strike on July
16 14th, 2022, correct?

17 A Yes.

18 Q And you were not disciplined in any way, shape, or form
19 for your participation in that strike; were you?

20 A No.

21 Q Do you have the exhibits in front of you? Do you have
22 what's marked General Counsel Exhibit 7 in front of you?

23 A Yes.

24 Q And you testified that this was the first time that Kim
25 Davis called you; is that correct?



- 1 A Yes.
- 2 Q Okay. You also testified that Kim Davis called you the
3 following day in mid-afternoon, correct?
- 4 A Yes.
- 5 Q And that Ms. -- would you agree with me it says that this
6 is a phone call from 3:42?
- 7 A Yes.
- 8 Q And is that p.m.?
- 9 A Yes.
- 10 Q And how do we know that this is not the second day?
- 11 A Because I did not take screenshots of the other two
12 conversations.
- 13 Q Okay. Why did you take a screenshot of the first one?
- 14 A Because I did not recognize the number.
- 15 Q Is it your practice to take screenshots of numbers that
16 you do not recognize?
- 17 A Yes.
- 18 Q Now, I'm not familiar with this phone. You said this is a
19 T -- sorry, a OnePlus 7T?
- 20 A Yes.
- 21 Q And does that phone allow you to see a call log of numbers
22 that have been received or gone out?
- 23 A To a certain extent, yes.
- 24 Q So you could have still seen this number had you not taken
25 a screenshot, correct?

1 A Yes.

2 Q So why -- so I'll ask again, why did you take a screenshot
3 of this?

4 MS. CHONG: Objection. Relevance.

5 JUDGE GEE: What is the relevance?

6 MR. FRONDORF: I have no idea. I want to know why this
7 document exists. It exists for one phone call, but does not
8 exist for two others. Is there something about this call that
9 was noteworthy or exceptional relative to the other two?

10 JUDGE GEE: I believe the witness gave her answer, or
11 their answer. Which was -- it was a phone number they were
12 unfamiliar with, and it is their practice to take screenshots
13 of such.

14 MR. FRONDORF: Thank you.

15 Q BY MR. FRONDORF: On July 14th, you had your first call
16 from Kim Davis, correct?

17 A Yes.

18 Q At that time, your store manager, and district manager,
19 were both out on vacation, or otherwise not working, correct?

20 A I do not remember.

21 Q Do you remember being introduced to Kim Davis previously
22 to this phone call?

23 A No.

24 Q You said that Kim gave you her title on the phone during
25 the first call, but that you don't recall that; is that

1 correct?

2 A Yes.

3 MS. CHONG: Objection. Misstates the facts.

4 JUDGE GEE: It does slightly differ from her testimony.
5 Why don't you just rephrase.

6 MR. FRONDORF: Okay.

7 Q BY MR. FRONDORF: You testified that Ms. Davis may have
8 given you her title, but you do not recall it, correct?

9 A Yes.

10 Q Thank you. Does your recollection stretch back far enough
11 whether you can say for certain one way or the other that she
12 gave you her title?

13 A It is common practice in my experience for members of
14 Starbucks Corporation to introduce themselves with both their
15 title and their name when they call employees of the store
16 locations. So while I cannot say for certain, I can say that
17 it is very likely that she would have given me her title.

18 Q But you don't recall?

19 A No.

20 Q And you don't recall whether or not the store manager, or
21 district manager, was out that day on vacation?

22 MS. CHONG: Objection. Asked and answered.

23 JUDGE GEE: Go ahead and answer that.

24 THE WITNESS: No.

25 Q BY MR. FRONDORF: But you do recall the words that Kim

1 Davis used on the phone with you that day?

2 A Yes.

3 Q But not all of them?

4 A Yes.

5 Q Just some of them?

6 A Yes.

7 Q Were you on the call when it was announced that the 505
8 Union Station store would be closed?

9 MS. CHONG: Objection. Relevance.

10 MS. MULTHAUP: And Your Honor, specifically did not allow
11 that testimony.

12 JUDGE GEE: Let's set a foundation for this particular
13 call. When did this call occur?

14 MR. FRONDORF: July 11th, 2022.

15 JUDGE GEE: Go ahead. Ask a few questions.

16 Q BY MR. FRONDORF: Do you recall a call that took place on
17 July 11th, 2022, where it was announced to the Starbucks
18 partners at 505 Union Station that the store would be closing
19 at the end of the month?

20 A Yes.

21 Q And who was on that call?

22 A All of the 505 Union Station store, and Olive Way, and our
23 district manager, whose name I do not recall, and several other
24 members of Starbucks Corporate.

25 Q Okay. And was this a Team's call?



1 A I don't remember.

2 Q Was this a video call?

3 A Yes.

4 Q And do you recall seeing Kim Davis on this call?

5 A I would not be able to identify her by her face.

6 Q My experience with Team calls is that there's also a name
7 that's provided with the face. Is that your experience as
8 well?

9 A Yes.

10 Q And did you see Kim Davis' name on the Teams call?

11 A I do not recall.

12 Q And you testified that Kim asked you when the strike was
13 going to be over, and when employees would come back; is that
14 correct?

15 A Yes.

16 Q And you told her that you did not know?

17 A Yes.

18 Q And at the time, did you know?

19 A No.

20 Q So it was an indefinite strike?

21 A Yes.

22 Q Is it true that not all of the partners at 505 Union went
23 on strike on July 14th, 2022, correct?

24 MS. CHONG: Objection. Calls for speculation.

25 MR. FRONDORF: No. It does not call for speculation.



1 JUDGE GEE: Pause. Go ahead, finish your objection.

2 MS. CHONG: It calls for speculation, and also threatens
3 to reveal the protecting the sort of activity of other workers.

4 JUDGE GEE: All right.

5 MR. FRONDORF: I didn't ask for names.

6 JUDGE GEE: Yeah, go ahead, Mr. Frondorf. Explain the
7 relevance of this line of questioning, given that I sustained
8 prior objections that would cause the disclosure of Section 7
9 activity.

10 MR. FRONDORF: I'm not asking for names, Your Honor. I'm
11 simply asking whether it's true that not all partners of 505
12 Union Station went on strike on July 14th, 2022.

13 JUDGE GEE: All right. Let me ask this.

14 Do you know whether or not all partners went out strike
15 for the July 14th, 2022, strike?

16 THE WITNESS: Yes.

17 JUDGE GEE: You do know that? And did they? Did all?

18 THE WITNESS: Not everyone did.

19 JUDGE GEE: I see. Okay. Go ahead, Mr. Frondorf.

20 MR. FRONDORF: That answers my question.

21 JUDGE GEE: All right.

22 MR. FRONDORF: I have nothing further.

23 JUDGE GEE: Thank you. General Counsel?

24 MS. CHONG: I don't have any further questions, Your
25 Honor?

1 JUDGE GEE: Ms. Multhaup?

2 MS. MULTHAUP: No questions.

3 JUDGE GEE: All right. Thank you very much.

4 General Counsel, would you like to call your next witness?

5 MS. CHONG: Yes. I'd like to call Erin Bray.

6 JUDGE GEE: Let's go off record.

7 (Off the record at 2:35 p.m.)

8 JUDGE GEE: Let's get back. Raise your right hand. Do
9 you swear or affirm to tell the truth, the whole truth, and
10 nothing but the truth.

11 THE WITNESS: I do.

12 Whereupon,

13 **ERIN "ARI" BRAY**

14 having been duly sworn, was called as a witness herein and was
15 examined and testified as follows:

16 JUDGE GEE: Have a seat. Please state your name for the
17 record, and then spell it.

18 THE WITNESS: My legal name is Erin Bray. That's E-R-I-N
19 B-R-A-Y. Recently, I've been going by Ari, though. That's
20 spelled, A-R-I.

21 JUDGE GEE: Okay. And spell your first name.

22 THE WITNESS: E-R-I-N.

23 JUDGE GEE: Oh, I see. Okay. General Counsel, go ahead,
24 please.

25 **DIRECT EXAMINATION**



1 Q BY MS. CHONG: Good afternoon. Can you tell us what your
2 pronouns are?

3 A She or they.

4 Q Okay. Thank you.

5 A Are you employed by Starbucks?

6 A I am.

7 Q How long have you been employed there?

8 A Just over four years.

9 Q When did you begin working there?

10 A June 10th, 2019.

11 Q At what location?

12 A It was a drive thru and cafe in Vancouver, Washington on
13 4th Plain.

14 Q Okay. Did you work anywhere else?

15 A Yes. I transferred to 505 Union Station, and I now work
16 at University Way.

17 Q Okay. When did you transfer to 505 Union Station?

18 A October of 2019.

19 Q And how long were you there?

20 A I was there until its closure at the end of July 2022.

21 Q Okay. What was your position -- actually, what is your
22 position at Starbucks?

23 A Currently, my position is barista, or barista trainer.

24 Q Have you been in that position the entire time?

25 A No.

1 Q What other positions have you held?

2 A I was a shift supervisor for a time.

3 Q When?

4 A I believe it was, like, autumn of 2021 until February of
5 2023.

6 Q Okay. I'm going to just request you speak up a tiny bit
7 because the court reporter has to hear you, and --

8 A Sorry.

9 Q -- you're a little muffled behind your mask. Okay. What
10 were your duties as shift supervisor?

11 A As a shift supervisor, I did all of the same things that a
12 baristas does, plus handling money, running other barista's
13 breaks, placing them in positions to facilitate business needs,
14 and sometimes inventory.

15 Q And about how many employees worked at the 505 Union
16 Station store when you were there?

17 A It fluctuated, but by the time it closed, it was about 13.

18 Q Okay. Who did you report to when you were there?

19 A What time?

20 Q When you worked out the 505 Union Station store.

21 A There were a few different managers over time. It started
22 with Mindy (phonetic throughout), and then later it was Evan.
23 I don't know how to say her first name. I'm going to do my
24 best, Vancoweaver. That was the store manager at the time the
25 store closed.

1 Q Okay. And do you know who Evan Vancoweaver reported to?

2 A Yes.

3 Q Who?

4 A Kayla Woodward.

5 Q And what's Kayla Woodward's position?

6 A She is the District manager.

7 Q Was there ever any petition filed for representation by
8 Workers United?

9 A Yes.

10 Q When?

11 A I believe it was March 16th, 2022.

12 Q What was the outcome of that election?

13 A The -- we won Union representation.

14 Q Okay. And when did you learn that this store was closing?

15 A Almost exactly a year ago on July 11th, 2022.

16 Q Okay. How did you find out?

17 A I found out via an email from Bruce Sarshay (phonetic
18 throughout).

19 Q Okay. What exactly did you learn?

20 A From that email?

21 Q Yes.

22 A The email from Bruce said that the store would be closing,
23 they said due to safety issues, and they wanted -- they --

24 MR. BECK: Objection, Your Honor. Hearsay. To the extent
25 we're going to see this email from Bruce. It seems like it

1 would be better to receive testimony regarding the document
2 itself, if it were admitted as an exhibit.

3 JUDGE GEE: Yeah, it -- I don't -- also, I don't see its
4 relevance, but are we -- we're not going to see the email
5 itself, are we?

6 MS. CHONG: I had proposed to stipulate to it, but
7 Respondent did not want it included, so I thought we'd just get
8 it in for context and timing of what's about to happen next.

9 MR. BECK: And if you -- if I may, Your Honor?

10 JUDGE GEE: Just one second. What about the timing?

11 MS. CHONG: The timing of the strike happening right after
12 receiving notice.

13 JUDGE GEE: I see. I see.

14 Go ahead, Mr. Beck. I'm sorry.

15 MR. BECK: The reason we did not agree to include Mr.
16 Sarshay's email as a Joint Exhibit is because we contested the
17 relevance of the email, and would do so again if it were
18 attempted to be admitted. To the extent we'd need testimony on
19 the timing of the email that's already been received, and I
20 didn't object to it, but the contents of the email aren't
21 relevant.

22 JUDGE GEE: Do you want to offer -- do you want to offer
23 stipulation as to the date of the email?

24 MS. CHONG: That would be fine, Your Honor.

25 JUDGE GEE: Go ahead, please. General Counsel, you go

1 ahead and do that. I believe it was July 11, 2022. Is that
2 agreed to by the parties?

3 MR. BECK: I would need to provide the document that was
4 provided to us last week, and I can do that right now.

5 JUDGE GEE: All right. Ms. Multhaup, you don't object to
6 the stipulation, right?

7 MS. MULTHAUP: No.

8 JUDGE GEE: Okay.

9 MR. BECK: Your Honor. Yes, we can confirm July 11th.

10 JUDGE GEE: Okay. So on July 11th, 2022, Starbucks
11 informed the baristas at the 505 Union Station store that their
12 store would be closing at some time in the future; is that
13 right?

14 MS. CHONG: More than just the baristas, I believe all
15 employees.

16 JUDGE GEE: Oh, I see. And when was this closure to take
17 place?

18 MS. CHONG: July 31, Your Honor.

19 JUDGE GEE: All right. And the parties stipulate to those
20 two dates? General Counsel, you're fine with that. Ms.
21 Multhaup, do you stipulate?

22 MS. MULTHAUP: I stipulate.

23 JUDGE GEE: Mr. Beck?

24 MR. BECK: Yes, we -- we agree to stipulate.

25 JUDGE GEE: All right. That stipulation is received and

1 that -- I'm going to say the content -- the content was store
2 closure.

3 All right. Go on. Go on, General Counsel.

4 MS. CHONG: Thank you, Your Honor.

5 Q BY MS. CHONG: Okay. So what happened next after being
6 informed about the store closing of 505 Union Station?

7 A After I received the email, we had a Teams meeting with,
8 Nica Tovey, the regional director, a number of district
9 managers, mainly people associated with East Olive Way, which
10 was closing also, and 505 Union Station. That was kind of all
11 one meeting. There were a couple of unrelated managers in
12 there as well among the attendees of the meeting. And that was
13 where, Nica Tovey mainly spoke and explained to us, let us ask
14 some questions, and then eventually cut the meeting off early.
15 And then after that, workers from 505 Union Station, Olive Way,
16 and other workers in the area who worked for Starbucks, kind
17 of, I don't know, spoke together, and we figured out that our
18 perspective was basically that it was not lawful, and we
19 decided to figure out ways to deal with that, and ultimately we
20 decided to strike.

21 Q Okay. And did you yourself participate in a strike?

22 A Yes, I did.

23 Q When was that?

24 A I believe it was July 14th is when it commenced.

25 Q And did anyone communicate with management of the

1 intention to strike?

2 A Yes.

3 Q Who?

4 A I believe it was Mari Cosgrove, who actually sent the
5 email on behalf of the workers of the store going on strike.
6 It was a strike notice, and it was sent to the store manager,
7 district manager, and I believe, any interim managers were also
8 emailed.

9 Q Okay. I'm going to be handing you what's been marked and
10 entered into evidence as Joint Exhibit 7. Does this document
11 look familiar?

12 A Yes.

13 Q What is it?

14 A This is the strike notice that we sent.

15 Q And is your name on the bottom of the notice?

16 A It is.

17 Q Okay. Did anyone in management contact you or try to
18 contact you around that time?

19 A Yes.

20 Q Who?

21 A Kim Davis texted, and called me.

22 Q Who's Kim Davis?

23 A As far as I understand, she works with basically partner
24 relations or HR at Starbucks.

25 Q When did she tried to contact you?



1 A She called me the morning of the 14th.

2 Q Can you please speak up just a little more?

3 A Sorry. Yeah. She called me the morning of the 14th.

4 Q Okay. Did you pick up?

5 A I did not.

6 Q How do you know she called you?

7 A I can -- I could see the missed call in my phone log. And
8 because she had communicated with me in the past, and I had her
9 name saved, I knew it was her when she called me.

10 Q And did Ms. Davis leave a voice mail message?

11 A Not with me.

12 Q Okay. Did you speak to Ms. Davis at any point around that
13 time?

14 A I did not speak to her after we went on strike, but I did
15 send a text message to her because she had texted me.

16 MS. CHONG: Okay. I am going to be marking for
17 identification as General Counsel Exhibit 8, as well as Exhibit
18 9.

19 And I'm **going** to put both documents in front of you. GC-9
20 is a three-page document.

21 **(General Counsel Exhibit Number 8 and 9 Marked for**
22 **Identification)**

23 Q BY MS. CHONG: Do you recognize GC Exhibit 8?

24 A I do.

25 Q What is it?



1 A This is a screenshot of my call log at the time, on, like,
2 at the latest I took the screenshot on, like, 7/16.

3 Q How do you know that?

4 A The latest one on there that I can see the date.

5 Q Oh, got you.

6 A The call is 7/16, so it was right around the time.

7 Q And the Kim that's listed in this call log, is that Kim
8 Davis?

9 A Yes, it is.

10 Q And can you explain what the red and white fonts indicate?

11 A Yeah. So the red ones indicate a missed call. And the
12 white ones are ones where I actually spoke to the person I'm
13 calling.

14 Q Okay. So on the 13th, does -- is that fair to say that
15 was an outgoing call to Kim?

16 A Yeah, that was a -- that was a callback.

17 Q A callback? Was that related to the strike?

18 A No.

19 Q Okay. So let's now look at GC Exhibit 9. You mentioned
20 that Ms. Davis also texted you. When was that?

21 A She texted me on the 13th, and then again on the 14th.

22 Q Okay. And on the third page, and I'll have you take a
23 look at the text messages on July 14, that morning.

24 MR. BECK: Your Honor, before any of the messages are read
25 on the record, I'd like to object to the use of General Counsel

1 Exhibit 9.

2 JUDGE GEE: What's the basis?

3 MR. BECK: General Counsel amended her complaint this
4 morning, and even in the amended complaint, there are no
5 allegations regarding Kim Davis interrogating employees by text
6 message, only by phone. So therefore, to the extent there are
7 any allegations arising out of text messages that Kim Davis
8 sent, they weren't in the original complaint, nor are they in
9 the amended complaint that you gave Ms. Chong permission to
10 enter this morning.

11 JUDGE GEE: I see. General Counsel, have you addressed
12 that, please?

13 MS. CHONG: Your Honor, to the extent phone can include
14 text message, I would argue that that could be included.

15 MR. BECK: May I respond on that ground, Your Honor.

16 JUDGE GEE: In just a moment.

17 MR. BECK: Of course.

18 JUDGE GEE: Just one moment. Given that -- go ahead.
19 Yeah, Mr. Beck, go ahead.

20 MR. BECK: In every other instance, in both the original
21 and amended complaint, counsel for General Counsel specifically
22 distinguished interrogations that were made by phone from
23 interrogations that were made by texts. If she's now trying to
24 lump both terms together, then those previous distinctions
25 meant nothing, and provided no notice to Respondent of what the

1 actual allegations were.

2 JUDGE GEE: General Counsel, let me have you respond to
3 that.

4 MS. CHONG: Your Honor, I can only say that we're -- we'd
5 like to still pursue this communication as part of -- part of
6 the evidence. And to the extent details are clarified, the
7 Respondent has been put on notice of the factual allegations
8 and violations, and could easily understand from speaking with
9 its own witnesses how he or she communicated.

10 MR. BECK: Your Honor, could I just respond briefly on
11 that point?

12 JUDGE GEE: Yes, go ahead.

13 MR. BECK: First, as Your Honor will recall, Respondent
14 filed a motion for particulars in this case, specifically
15 raising our concerns that the language in the original
16 complaint did not provide enough notice or detail for us to
17 understand what the allegations were.

18 Now, Ms. Chong is completely diverting from her
19 distinctions between interrogations by phone, and
20 interrogations by text message to include an entirely new
21 universe of text messages. And if I may proffer, Your Honor,
22 this particular witness Kim Davis was unavailable for us to
23 interview in preparation for this trial until she returned from
24 a leave of absence just yesterday, which was the basis for us
25 requesting that this hearing be rescheduled to today in the

1 first place. So to the extent counsel for General Counsel will
2 indicate that we could have made ourselves aware of this
3 information, we could not have because we did not have access
4 to this witness, and she did not provide notice to us.

5 JUDGE GEE: All right. Just one second, please. So
6 General Counsel, is it your contention that paragraph 5G of the
7 complaint includes this text message that you have marked as GC
8 Exhibit 9?

9 MS. CHONG: Yes, Your Honor. And if you were in the
10 alternative, I would like to then clarify that this was via
11 phone and text message.

12 JUDGE GEE: That is, you're seeking to amend subparagraph
13 5G to essentially include the allegation by Kim Davis by phone
14 and text interrogated?

15 MS. CHONG: Yes, Your Honor. And I would like to point
16 out that Kim Davis has been listed in paragraph 5A since
17 January of this year. I'm sorry, not 5A, but in paragraph 5
18 since January when the complaint issued. So Respondent has had
19 seven months to discuss this with Ms. Davis.

20 MR. BECK: Your Honor, may I --

21 JUDGE GEE: Just one second, please.

22 MR. BECK: Of course.

23 JUDGE GEE: Go ahead, Mr. Beck.

24 MR. BECK: To the extent that counsel for General Counsel
25 is proposing she moves to amend her complaint again, i

1 referring back to the three factors we discussed this morning,
2 while there may not -- or while Your Honor found that there was
3 not surprise or lack of notice in that instance, this is quite
4 literally the definition of surprise and lack of notice, in
5 addition to discussion of the other factors which we can get
6 into if needed. But Your Honor, we were not provide any degree
7 of notice that these allegations regarding General Counsel's
8 proposed Exhibit 9 were at issue in this case. And we are
9 being very much surprised by this revised allegation in the
10 sense that counsel for the General Counsel is now reinventing
11 the entire way we're intended to review the paragraphs -- the
12 subparagraphs in paragraph 5 of the amended complaint.

13 JUDGE GEE: I think, General Counsel, it is a fair
14 question. Why paragraph 5G wasn't previously described as by
15 phone and by text? I think that's a fair question.

16 MS. CHONG: I don't have a response to that, Your Honor.

17 JUDGE GEE: All right.

18 MS. CHONG: I only say that as I am looking at what we
19 have, that the facts clearly show that that should have been
20 amended. And I would like to request that we do amend it. Ms.
21 Davis has been in paragraph 5 all along, and Respondent could
22 easily have learned these facts. There's no lack of due
23 process by any means.

24 MR. BECK: Your Honor, would you permit a final word from
25 Respondent in response to that statement?

1 JUDGE GEE: Of course.

2 MR. BECK: Your Honor, it seems axiomatic to say this, but
3 words have meaning. This case is being put on by General
4 Counsel. It's General Counsel's case to prove. It is not our
5 burden. When Kim Davis was named in the original pleadings,
6 she was named as having interrogated partners by phone, and the
7 minute we were able to review her, or prepare with her for the
8 today's hearing, it was only 9 a.m. yesterday morning. We
9 discussed with her whether or not she engaged in the
10 allegations alleged against her, i.e., did she interrogate
11 partners by phone?

12 Ms. Chong was apparently aware of the fact, or not aware
13 of the fact, that her file contained additional documents that
14 would give grounds to additional allegations. But yet when she
15 moved to amend her complaint three business days ago, and again
16 this morning, she omitted these particular items that she
17 intended to pursue in her case.

18 JUDGE GEE: All right. So let me -- let me go through the
19 three factors in Rogan Brothers. Number one, whether there are
20 a surprise or lack of notice. One could argue that there is
21 surprise, and that's certainly Respondent's position. However,
22 this notice is coming while General Counsel is still completing
23 her case-in-chief and prior to Respondent's presentation of its
24 defense.

25 Second, whether there's a valid excuse for the delay in

1 moving to amend. And it appears to me that General Counsel, in
2 so many words, is just admitting to an oversight. And number
3 three, whether the matter was fully litigated. It -- because
4 it's coming at this stage of the proceeding before Respondent's
5 opening statement, before Respondent's presentation of
6 evidence, the matter can be fully litigated, as I said this
7 morning with regard to Ms. Quesenberry, if Ms. Davis wants to
8 testify by Zoom video, if that's something that's going to be
9 necessary to address this late notice, I will certainly
10 entertain that notion.

11 So at this point, I'm going to grant General Counsel's
12 motion to amend subparagraph 5G of the complaint to read, on
13 about July 14th, 2022, responded by Kim Davis, by phone and by
14 text, interrogated its employees about their protected
15 concerted activities, period.

16 All right. Go ahead, General Counsel.

17 Q BY MS. CHONG: Okay. All right. Ms. Bray, I'll have you
18 take a look again at General Counsel Exhibit 9. And it really
19 it's page 3. And you can explain why we have three pages of
20 this document, if you would like.

21 A Yes. This is actually my entire text history with Kim
22 Davis. And I think we just wanted to establish that she
23 introduced herself as Kim from Starbucks so that the later text
24 messages would have some credence.

25 Q Okay. And the document speaks for itself on page 3

1 about -- and would you say that's the integrity of the text
2 message that day with Ms. Davis?

3 A Yes.

4 Q Okay. Did you -- okay. So after your response, was there
5 any further communication?

6 A Not between me and Kim Davis, no.

7 MS. CHONG: Okay. I'd like to offer General Counsel
8 Exhibit 8 and 9 into evidence.

9 JUDGE GEE: All right. Ms. Multhaup?

10 MS. MULTHAUP: No objection.

11 JUDGE GEE: All right. Mr. Beck?

12 MR. BECK: Your Honor, we have no objection to General
13 Counsel Exhibit 8, but we do object to relevance on the grounds
14 previously discussed regarding General Counsel Exhibit 9,
15 understanding your ruling, but contesting the relevance of it.

16 JUDGE GEE: All right. Thank you. GC Exhibits 8 and 9
17 are received.

18 **(General Counsel Exhibit Number 8 and 9 Received into Evidence)**

19 JUDGE GEE: Let me ask the witness, could I ask you to
20 step out of the room for just a moment. We'll come and get
21 you.

22 THE WITNESS: Just outside the door?

23 JUDGE GEE: Maybe around the corner.

24 THE WITNESS: Okay.

25 JUDGE GEE: To the -- General Counsel, to the extent that

1 an interrogation allegation is based on GC-9, would you direct
2 me to the language in this text that constitutes that --

3 MS. CHONG: Yes.

4 JUDGE GEE: -- alleged interrogation?

5 MS. CHONG: At page 3 of that document.

6 JUDGE GEE: All right.

7 MS. CHONG: It would be the middle of the page. "Hi,
8 Erin, I wanted to connect about your shift today. Please give
9 me a call back".

10 JUDGE GEE: All right. And nothing else?

11 MS. CHONG: As far as this witness, Your Honor?

12 JUDGE GEE: Oh, no.

13 MS. CHONG: Oh, okay.

14 JUDGE GEE: In terms of language that constitutes an
15 unlawful interrogation.

16 MS. CHONG: For this document, that's nothing else.

17 JUDGE GEE: Okay.

18 MS. CHONG: Yeah, that's it, Your Honor.

19 JUDGE GEE: All right. Would you kindly get the witness?

20 Okay. Ms. Bray, let me just remind you, you're still
21 under oath. I am.

22 JUDGE GEE: Thank you. Go ahead, General Counsel.

23 Q BY MS. CHONG: Ms. Bray, did you receive any further
24 communication or contact from anyone else in management around
25 this time?

1 A I don't think so.

2 Q Okay.

3 MS. CHONG: No further questions.

4 JUDGE GEE: All right. Ms. Multhaup?

5 MS. MULTHAUP: I just have one or two, if it's okay.

6 JUDGE GEE: Go ahead, please.

7 **DIRECT EXAMINATION**

8 Q BY MS. MULTHAUP: Looking at General Counsel's Exhibit 9,
9 the text from Kim Davis on July 14th; do you see that on page
10 3? And it says that that text came in at 7:07 a.m.; is that
11 correct?

12 A Yes.

13 Q Do you know whether the store had previously sent its
14 strike notice before 7:07 a.m.?

15 A I think so.

16 Q We were in the habit of sending it at midnight or like
17 right at open -- the normal open time. And what time did the
18 store open?

19 A That is hard for me to remember. It was hard for me to
20 remember at the time because I'm the closer. I just don't know
21 when we opened. But I think it would have been as early as
22 4:30 or 5.

23 Q Would it have been before 7:07 a.m.?

24 A Yes.

25 Q Okay. Do you know that for sure?



1 A Yes.

2 Q Okay. And did the strike start at the -- or when did the
3 strike start?

4 A Am I allowed to look at the strike notice, because that
5 should say?

6 Q You're going to refresh your memory by looking at Joint
7 Exhibits 4 -- no, wait, Joint Exhibit --

8 MS. CHONG: 7.

9 Q BY MS. MULTHAUP: -- 7; is that correct?

10 A Yeah.

11 Q Okay. And does that refresh your recollection as to what
12 time the strike started on July 14th?

13 A Yes.

14 Q What time did it start?

15 A 5:30 a.m.

16 MS. MULTHAUP: No further questions.

17 JUDGE GEE: Thank you. Mr. Beck?

18 MR. BECK: Before cross-examination, any Jencks materials?

19 MS. CHONG: I do have some, Your Honor.

20 JUDGE GEE: All right. Let's go off record, please.

21 MR. BECK: Your Honor, if you don't mind, before we go off
22 the record.

23 JUDGE GEE: Let's stay on for a moment. Yes?

24 MR. BECK: Before taking a break to review Jencks
25 materials and prepare for cross-examination, now that the

1 complaint has been amended orally, we believe it would be
2 proper to amend our answer to provide responses to the
3 additional subparagraphs in the complaint. If the Court would
4 like to do so now, we'd be happy to do that. Otherwise we can
5 wait until a more appropriate time, perhaps after the witness'
6 testimony is completed.

7 JUDGE GEE: Let's do the latter, please.

8 MR. BECK: Okay.

9 JUDGE GEE: Thank you.

10 MR. BECK: Thank you. In that case, we're good to go off.

11 JUDGE GEE: Go off record.

12 (Off the record at 3:10 p.m.)

13 JUDGE GEE: All right. We are now back on. Mr. Beck, do
14 you have questions for this witness?

15 MR. BECK: I do.

16 **CROSS-EXAMINATION**

17 Q BY MR. BECK: Good afternoon. I believe you said your
18 preferred name is Ari. Is it okay if I call you Ari?

19 A That's fine.

20 Q My name is Ian Beck. I'm one of the attorneys for the
21 Respondent Starbucks in today's case. I've just got a few
22 questions for you this afternoon. I'd like to start off, you
23 mentioned in your testimony on direct examination that you at
24 one time were a shift supervisor at the 505 Union Station
25 store; is that right?

1 A I was a shift supervisor at 505 Union Station and at
2 University Way for a time.

3 Q Thank you for clarifying that. As a shift supervisor, are
4 you generally aware of whether or not there are any staffing
5 minimums needed in order to keep a store open and operational?

6 A Sorry. Could you ask the question again?

7 Q As a shift supervisor, are you aware if there's a minimum
8 number of partners who would need to be working in order for a
9 store like 505 to operate?

10 A I'm not specifically aware of any guidelines.

11 Q Well, I'm not asking for guidelines necessarily. I'm just
12 saying, in your experience as a shift supervisor, are you aware
13 of whether or not there's a minimum number of partners who you
14 need to have in order to run a floor, and keep service flowing
15 for customers?

16 MS. MULTHAUP: Your Honor, I'm going to object to the
17 extent that the witness testified that there's no guideline.
18 And then the follow-up question calls for speculation about the
19 approximate number of partners that could leave the store open.

20 JUDGE GEE: Overruled. And just answer -- do you
21 understand the question?

22 THE WITNESS: I'm just not really sure.

23 JUDGE GEE: Let me try. Let's suppose you're running --
24 your operating 505 Union Station. You have a number of people
25 who call in sick, or otherwise unavailable. How many people

1 would be a minimum to keep the store running, that type of
2 store?

3 THE WITNESS: It's a hard question for me to answer just
4 because there's a lot of factors. But I think Starbucks has
5 been okay with two people operating the store at a time.

6 JUDGE GEE: Oh, I see.

7 THE WITNESS: But it's not ideal.

8 JUDGE GEE: It's not ideal? There should be more,
9 ideally?

10 THE WITNESS: Yeah.

11 JUDGE GEE: And what would be a more reasonable number?

12 THE WITNESS: It was common for us to close with just
13 three people in my time at 505 Union Station. Depending on the
14 level of business, one or two more people might have been
15 appropriate.

16 JUDGE GEE: All right. Go ahead, Mr. Beck.

17 MR. BECK: Thank you, Judge Gee.

18 Q BY MR. BECK: Moving on, Ari, I believe you testified that
19 on July 11th of 2022, you attended a Teams meeting that was
20 hosted by Regional Director Nica Tovey; is that correct?

21 A I believe so, yeah.

22 Q And in addition to Nica, I believe you testified that
23 there were other managers of Starbucks who were in attendance
24 at that meeting?

25 A Yes.

1 Q Do you recall if Kim Davis was one of the managers that
2 you mentioned?

3 A I don't recall seeing her in the meeting. I do recall
4 seeing her name in the email about the teams meeting?

5 Q Okay. So if I'm understanding you correctly that the
6 email invitation you would have received with the teams meeting
7 link, you recall seeing Kim Davis' name on the recipients of
8 that invitation?

9 A Yes.

10 Q Okay. But you don't necessarily recall seeing Kim Davis
11 specifically on the webcam during the meeting?

12 A I do not.

13 Q Okay. Do you recall at any point Nica, or any other
14 manager introduced Kim to the partners who were in attendance
15 on the meeting?

16 A I don't recall that.

17 Q I think you had testified that prior to July 13th, 2022,
18 you had communicated with Kim Davis in the past; is that right?

19 A Prior to the 13th?

20 Q Yes.

21 A I think I may have, yeah.

22 Q Because I think what you explained was that the reason you
23 had her number saved as Kim in your phone on July 13th is
24 because you had had some communication with her before that?

25 A That was my first communication with her directly on the

1 13th.

2 Q Right. What I'm saying, or what I'm driving at --

3 A Oh, sorry.

4 Q -- is did you ever speak with Kim Davis before July 13th,
5 2022?

6 A Not directly.

7 Q Okay. How did you indirectly communicate with her prior
8 to that?

9 A I know that she was in charge of some aspect of business
10 at 505 Union Station during that period of time between the
11 11th and 14th, and on. Our manager was out of the office for
12 whatever reason, and I think I had received communications kind
13 of down from her about, like, stores closing early a lot during
14 that period of time, and he would just hear things from Kim
15 from another person.

16 Q Okay. So I'm going to break that down to make sure I
17 understand correctly. So at some point prior to July 13th, you
18 had learned that Kim Davis would be supporting partners at the
19 505 Union Station store in some kind of oversight role?

20 A Something like that, yeah.

21 Q And I believe you said that was because the store manager
22 was out of the office?

23 A I think she was on vacation or something.

24 Q And -- and just to put a name to the title, that would
25 have been Evan Vancoweaver?

1 A Yes.

2 Q Okay. Are you aware of whether District Manager Kayla
3 Woodward was also out of the office at that time?

4 A I think she might have been.

5 Q I believe he testified to a certain extent about the
6 document that I believe is in front of the Joint Exhibit 7,
7 which was the notice of strike that was sent related to the 505
8 strike. Let me know when you got it.

9 A Yes. I have it in front of me.

10 Q Thank you. All right. Did you participated in preparing
11 or drafting this notice to strike in any way?

12 A I think I helped with some of the paragraphs towards the
13 end.

14 Q All right. Do you know who's store manager peer coach,
15 Olivia Aldridge is?

16 A She was the former store manager of 23rd and Jackson. I
17 believe at this time she was seeking to be promoted to district
18 manager, and so her role was a peer coach/store manager, and
19 she was in charge of 505 Union Station on a few previous
20 occasions, and I believe during this time.

21 Q Okay. And likewise, do you know who district manager
22 Katie Akers is?

23 A I just know that she's a district manager.

24 Q Okay. Do you know from your involvement in preparing this
25 notice of strike, why it was addressed to Olivia Aldridge and

1 Kate Akers?

2 A I believe that they were in charge of the store directly
3 during this time because of the other people being on vacation
4 or absent.

5 Q Okay. So is it correct that this letter was addressed to
6 Olivia Aldridge and Katie Akers because Evan Vancoweaver and
7 Kayla Woodward were out of the office on July 14th when it was
8 sent?

9 A I think that's likely.

10 Q Do you know from your involvement preparing the notice of
11 strike how long the strike was supposed to last?

12 A At this time that it was written, it was an indefinite
13 strike.

14 Q Do you -- as you sit here today, Ari, what did you
15 interpret the word "indefinite" to mean as used in this notice
16 of strike?

17 A Indefinite until further notice. It will continue until
18 we tell you that it stops.

19 Q Without providing me any names, are you aware of any
20 partners at 505 who returned to work after this notice of
21 strike was sent, but before the store was closed on July 31st?

22 MS. MULTHAUP: Objection. Relevance.

23 JUDGE GEE: What is the relevance?

24 MR. BECK: Your Honor. The counsel for General Counsel's
25 contention is that partners were contacted for the purpose of



1 identifying whether or not they'd be participating in the
2 strike, or crossing the picket line, as noted in her opening
3 statement. In fact, it is our contention that partners of the
4 505 Union Station store were contacted in order to determine
5 when the indefinite strike may or may not end. This testimony
6 goes to whether or not partners ever returned after issuing
7 this notice, verifying, or adding weight to our contention that
8 Starbucks managers are reaching out in order to identify when,
9 if at all, the store would be able to be operational in this
10 otherwise unspecified indefinite strike.

11 JUDGE GEE: All right. Why don't you ask the question
12 again, please?

13 MR. BECK: Okay.

14 Q BY MR. BECK: Ari, without providing me any names, are you
15 aware of any partners who worked at 505 Union Station as a home
16 store, who return to work there at any point between 5:30 a.m.
17 on July 14th, 2022, and when that store was closed?

18 A It closed on the 31st?

19 Q Yes.

20 A Yes.

21 Q Okay. And then I'd like to direct your attention to two
22 other documents that should be in front of you. Those marked
23 General Counsel Exhibit 8 and General Counsel Exhibit 9. And
24 let me know when you've got those.

25 A I have them.

1 Q Okay. So referring first to General Counsel Exhibit 8,
2 you received a call from Kim Davis on July 31st, and that was a
3 missed call, right?

4 A Did you mean to say the 13th?

5 Q I did. Thank you.

6 A Yes.

7 Q Okay. Do you remember about what time of day Kim Davis
8 called you in that first or that lower most entry?

9 A Looking at that on its own, I can't recall. But I think
10 that if I looked at the text messages on this other page, it
11 would refresh my memory.

12 Q That's exactly where I was going next, so thank you. So
13 looking at General Counsel Exhibit 9, would you agree with me
14 that Kim Sent you a text message on July 13th at 9:45 a.m.?

15 A Yes.

16 Q Okay. So do you recall if the missed call you had from
17 Kim was before or after she sent you this text message at 9:45?

18 A I think it was before.

19 Q Okay. And then it appears, still looking at General
20 Counsel Exhibit 9, that you sent Kim a response text message at
21 about 11:29 a.m. Do you remember that?

22 A Yes.

23 Q Bear with me here. We're going to jump back to 8. It
24 shows an outgoing call to Kim Davis on July 13th. So do you
25 recall if your call to Kim was before or after you sent the

1 11:29 a.m. text message?

2 A My call back to Kim on the 13th was before my text message
3 back to her on the 13th.

4 Q Did you and Kim speak on the phone when you reached out
5 prior to sending the 11:29 text?

6 A Did we speak on the phone prior to --

7 Q When you called her in that outgoing entry, were you and
8 Kim able to speak on the phone?

9 A Yes.

10 Q Okay. During that conversation on July 13th, was there
11 any discussion of strike activity whatsoever?

12 A No.

13 Q Okay. And in the text message that Kim sent you at 9:45
14 a.m., am I correct in reading that she states, "Hi, Erin. This
15 is Kim from Starbucks. I'm supporting 505 this week while Evan
16 is out of business this week. I called you to discuss your
17 shift this afternoon. Please give me a call back and we can
18 connect about it. Thank you." Did I read that correctly?

19 A I have -- yes.

20 Q Okay. And then, as you discussed on direct, the notice of
21 strike was sent to store managers sometime in the early morning
22 on July 14th, 2022; is that correct?

23 A Oh, sorry. That's actually something else.

24 Q So that would be a Joint Exhibit 7 is the notice of
25 strike?

1 A Yes. Yeah.

2 Q Okay. And so that was sent sometime in the early morning
3 of July 14th, 2022?

4 A Yes.

5 Q And I believe you testified that your colleague, Mari
6 Cosgrove, was the one who actually sent the notice?

7 A I believe so.

8 Q Okay. A similar pattern seems to emerge in the call and
9 text logs on July 14th, so I'd like to ask similar questions.
10 It appears as though you received a missed call from Kim Davis
11 on July 14th; is that right?

12 A Yes.

13 Q It appears from General Counsel Exhibit 9 that Kim sent
14 you a text message on July 14th at 7:07 a.m.; is that right?

15 A Yes.

16 Q Do you recall if the first missed call you received from
17 Kim on July 14th was before or after she sent you the 7:07 a.m.
18 text message?

19 A I am not certain. But what I do remember is I woke up and
20 I had the missed call and the text, both from her.

21 Q Do you remember if Kim left you a voice mail at all on
22 July 14th?

23 A I'm almost certain she did not.

24 Q Okay. And the 7:07 a.m. text message, which is seen in
25 its entirety on the third page of General Counsel Exhibit 9,

1 reads, "Hi, Erin. I wanted to connect about your shift today.
2 Please give me a call back." Did I read that correctly?

3 A Yes.

4 Q Okay.

5 A And then it appears as though you responded to Kim at
6 about 8:15 that morning; is that right?

7 A Um-hum. Yes.

8 Q And you noted, "That won't be necessary. I am on strike."
9 Did I read that correctly?

10 A Yes.

11 Q It appears you have a second missed call from Kim on July
12 14th. Do you see that on General Counsel Exhibit 8?

13 A Yes, I do.

14 Q Did you speak with Kim any later than 8:15 a.m. on July
15 14th?

16 A No.

17 Q Okay. Do you remember if Kim left you any kind of voice
18 mail after her second missed call to you on the 14th?

19 A I don't believe she did.

20 Q Okay. So after sending Kim a text message at 8:15 a.m. on
21 July 14th, did you have any further communication with Kim
22 Davis?

23 A Not that I recall right now.

24 Q Okay. And are the text messages that are seen in General
25 Counsel Exhibit 9 the entirety of text messages you exchanged

1 with Kim Davis?

2 A Yes.

3 Q Ari, referring back -- a few moments ago, you testified
4 that you were generally aware that there were some partners who
5 returned to work at 505 after July 14th. Are you aware if
6 there was any discipline issued to those partners after they
7 returned to work?

8 A I don't think so.

9 Q Without providing me any names, if there are any, did any
10 partners tell you or communicate to you in some way that they
11 were disciplined for their involvement in the strike after
12 returning to work?

13 MS. CHONG: Objection. Calls for hearsay.

14 JUDGE GEE: Go ahead and answer that.

15 THE WITNESS: Sorry. What was that again?

16 Q BY MR. BECK: Without providing me any names, did any
17 partners at 505 communicate with you that they received
18 discipline after returning to work after July 14th?

19 A No, I don't think so.

20 MR. BECK: Your Honor, I have no further questions for
21 this witness.

22 JUDGE GEE: All right. General Counsel?

23 MS. CHONG: I do have a question and a document I'd like
24 to put in front of the witness that's being printed right now,
25 Your Honor. If we could just pause, maybe a couple of minutes

1 while that's happening.

2 MS. MULTHAUP: I have a couple of questions, if?

3 JUDGE GEE: Yeah, please.

4 MS. MULTHAUP: Thanks.

5 **REDIRECT EXAMINATION**

6 Q BY MS. MULTHAUP: Ari, in the strike notice, it noted that
7 the strike was an indefinite strike. Did the strike continue
8 until the store was closed on July 31st?

9 A No.

10 Q Did workers go back to work before the store was closed on
11 July 31st?

12 A Yes.

13 Q Do you remember approximately when?

14 A I think it was the 21st.

15 Q And do you know whether there was notice sent to
16 management saying that the strike was ending, and people would
17 go back to work?

18 A Yes.

19 Q Do you know approximately when that was sent?

20 A Like date or time?

21 Q Right.

22 A I think it was sent the day before we would go back to
23 work.

24 Q Okay. And do you know who the notice was sent to?

25 A Names, I'm not certain, but I am certain that it was the

1 relevant managers from 505.

2 Q Okay. And do you know who sent the notice of intent to
3 return to work?

4 A I believe it was Mari Cosgrove.

5 Q Okay. Thank you.

6 JUDGE GEE: Let's go off record for a few minutes.

7 (Off the record at 4:07 p.m.)

8 JUDGE GEE: We're back on.

9 MS. CHONG: I have marked for identification as General
10 Counsel Exhibit 10.

11 **(General Counsel Exhibit Number 10 Marked for Identification)**

12 **REDIRECT EXAMINATION**

13 Q BY MS. CHONG: Ms. Bray, do you recognize this document?

14 A Yes, I do.

15 Q What is it?

16 A This is the email version of the strike notice that we
17 sent with the replies.

18 Q And because we've been talking about the timeline of
19 events from the 13th through the 14th, could you explain when
20 you're understanding -- what your understanding is of when the
21 notice was sent to the employer about the strike?

22 A The notice was sent on July 13th, just 12 minutes before
23 midnight.

24 Q Okay. And I see at the very top that you're copied on
25 this email string; is that right, on the cc line?

1 A Yes.

2 Q Okay. And can you explain or verify, rather, whether this
3 was the notice of returning to work that you just testified
4 about?

5 MR. BECK: Your Honor, I would object as outside the
6 scope.

7 MS. CHONG: Your Honor, Respondent raised the return date,
8 and I'm addressing that here.

9 MR. BECK: Your Honor, if I may respond.

10 JUDGE GEE: Yeah, please.

11 MR. BECK: I did not raise the return date. I simply
12 asked that if this witness had any general knowledge of if
13 partners returned to work. The issue of when and how that was
14 communicated to Starbucks was not anything that I delved into.
15 It's not relevant.

16 MS. CHONG: Your Honor?

17 JUDGE GEE: Yeah, just one second, please.

18 MS. CHONG: Thank you.

19 JUDGE GEE: Let me have General Counsel first. What is
20 the value of this particular document?

21 MS. CHONG: For a couple of reasons, Your Honor. It
22 establishes when the notice was actually sent, as that's not
23 evident in the Joint Exhibit 7 notice. However, this does
24 establish the date and time. One form of communication was
25 sent. And I also wanted to ask the witness about the thread

1 right above it. And to the extent we want the full picture of
2 how long the strike lasted. I believe that this provides that
3 information.

4 MR. BECK: Your Honor, may I respond on those grounds?

5 JUDGE GEE: Sure.

6 MR. BECK: First, we've already received testimony of a
7 general idea of when the initial notice of strike was sent to
8 relevant managers from Starbucks, so that that is already
9 amounted to. The additional portions of this thread simply
10 aren't relevant. This is a case about alleged interrogatory
11 statements. Nothing in the in the documents, or in the
12 additional thread established here makes it more or less likely
13 that those statements are to have occurred.

14 Moreover, just from a evidentiary standpoint, counsel for
15 General Counsel is attempting to admit to emails that appear to
16 have been sent from Mari Cosgrove, who is not the witness on
17 the stand. The witness on the stand was copied. We've
18 received no testimony that the witness on the stand prepared or
19 had direct knowledge of the statements that Ms. -- that Mari
20 Cosgrove made.

21 Moreover, there is, without delving into the contents too
22 much, there's content in these messages that has no basis in
23 the established record of the case so far based on what the
24 testimony has been. So there's -- there's relevance concerns,
25 there are foundational and evidentiary concerns, and -- and

1 most importantly, it's not appropriate in the context of
2 redirect as the additional message was sent by Mari Cosgrove on
3 July 14th and July 21st, are outside the scope of my cross-
4 examination.

5 JUDGE GEE: I -- I believe this touches upon a subject
6 that Ms. Multhaup asked about her examination of the witness,
7 and in terms of the witness' ability to authenticate, I believe
8 she just testified that this is something that she received as
9 opposed to that she participated in as a drafter of this.

10 Ms. Multhaup, you wanted to say something?

11 MS. MULTHAUP: Just on the relevance point that it is
12 responsive -- this is not my exhibit, but I brought up the
13 return to work issue because Respondents had brought up that
14 issue in cross-examination for the first time about whether
15 their workers returned to work before the store closed, and
16 that was leaving it very open about when they returned and
17 whether they returned pursuant to the strike being done, or
18 else -- or something else, presumably. And so that's why I
19 want to clarify that the strike wasn't indefinite. There was
20 an end. And so in light of that, this seems to be relevant to
21 establishing a timeline of when the strike was actually ended,
22 when people returned to work.

23 JUDGE GEE: All right.

24 MR. BECK: Your Honor, if I may have one final note?

25 JUDGE GEE: Yeah, yeah, please. Of course.

1 MR. BECK: At the fear of beating a dead horse, but to not
2 let the slow death of irony go uncommented on, this is a
3 document now being produced by counsel for General Counsel with
4 no metadata whatsoever. So --

5 JUDGE GEE: General Counsel?

6 MS. CHONG: Your Honor, this is a document that has all
7 the information needed as far as who sent it, the time stamp,
8 who received it, and we were not subpoenaed for that. We can
9 introduce into evidence the documents we deem relevant.

10 JUDGE GEE: Go ahead. Just go ahead and answer your
11 questions. I'm going to overrule the objection. Go ahead and
12 ask your question.

13 Q BY MS. CHONG: So for the record, Ms. Bray, do you have
14 any personal knowledge of what's being discussed at the center
15 of the page, dated July 14, 2022, at 4:02 p.m. by Mary
16 Cosgrove? Do you have any direct knowledge or personal
17 knowledge about what's in that?

18 A I know what it is in response to.

19 Q Okay. What is it in response to, and how do you base that
20 knowledge?

21 JUDGE GEE: Let's do the second question first.

22 MS. CHONG: Okay.

23 JUDGE GEE: How are you aware of this issue?

24 THE WITNESS: I was -- we were in the process of striking,
25 picketing, and demonstrating, and people received calls in

1 front of me. And told me that they received calls, and they
2 were not comfortable with it. So I spoke with Mari, and I
3 think that they ran some of the language of this response by me
4 and they sent it in order to get the incessant calling to stop.

5 JUDGE GEE: Okay. Go ahead, General Counsel.

6 Q BY MS. CHONG: Okay. And as far as the message above that
7 regarding the return to work date and time, was that your
8 understanding of the events that occurred?

9 A Yes, we did go back to work at that time.

10 MS. CHONG: All right. I offer General Counsel Exhibit 10
11 into evidence.

12 JUDGE GEE: Ms. Multhaup?

13 MS. MULTHAUP: No objection.

14 JUDGE GEE: All right. Mr. Beck?

15 MR. BECK: I would raise the same grounds and objections
16 previously stated.

17 JUDGE GEE: Which is? Which is relevance?

18 MR. BECK: Relevance. Hearsay. Lack of foundation.

19 JUDGE GEE: All right. Overruled. GC Exhibit 10 is
20 received.

21 **(General Counsel Exhibit Number 10 Received into Evidence)**

22 JUDGE GEE: General Counsel, do you have any more
23 questions?

24 MS. CHONG: Your Honor, I -- I do not.

25 JUDGE GEE: All right. Ms. Multhaup, do you have any

1 questions?

2 MS. MULTHAUP: No questions. Thank you.

3 JUDGE GEE: Mr. Beck?

4 MR. BECK: A very brief line of recross, Your Honor.

5 JUDGE GEE: Yeah, please, go ahead.

6 **RECROSS-EXAMINATION**

7 Q BY MR. BECK: All right. If you wouldn't mind turning to
8 General Counsel Exhibit 8 one last time.

9 A It's in front of me.

10 Q Okay. Perfect. How many calls did you see received from
11 Kim Davis on July 14?

12 A Two.

13 Q Did you answer either of those calls?

14 A No.

15 Q Did you receive any other calls from Kim Davis other than
16 the two shown on General Counsel Exhibit 8 on July 14th?

17 A No.

18 MR. BECK: No further questions, Your Honor.

19 JUDGE GEE: All right. Thank you. All right. You are
20 released. Thank you very much.

21 THE WITNESS: You want me to leave these here?

22 JUDGE GEE: Please.

23 THE WITNESS: Okay.

24 JUDGE GEE: General Counsel. Do you have any other
25 witnesses?

1 MS. CHONG: Not until I see the documents, Your Honor.

2 JUDGE GEE: I see.

3 MR. FRONDORF: Are they not on your desk?

4 MS. CHONG: I'm talking about the documents that include
5 all the information we actually need converted, so.

6 JUDGE GEE: Thank you. Just kindly direct your comments
7 to me. All right. So at the present time for General
8 Counsel's case-in-chief, you are done; is that correct?

9 MS. CHONG: Yes, Your Honor.

10 JUDGE GEE: And Ms. Multhaup, does the Charging Party
11 Union intend to present a case independent of the General
12 Counsel, or defer to the General Counsel's case?

13 MS. MULTHAUP: Defer to the General Counsel's case with
14 the same reservations that we'd like the opportunity to call a
15 witness for a rebuttal, depending on what the documents --

16 JUDGE GEE: Right. And the controversy about the
17 documents is what we addressed this morning, which is the
18 Agency needs some time to convert the documents furnished this
19 morning into TIFF Plus format, and to a form that the General
20 Counsel can readily access and search. We'll find out more
21 tomorrow about the status of that issue. At this point --

22 MR. FRONDORF: Your Honor? May I --

23 JUDGE GEE: Yes?

24 MR. FRONDORF: -- put one more thing on the record before
25 we conclude?

1 JUDGE GEE: Sure.

2 MR. FRONDORF: If that's where you're heading?

3 JUDGE GEE: Of course. Yeah.

4 MR. FRONDORF: I just want the record to be very clear
5 that on the counsel for the General Counsel's desk is our
6 document production, and that we should not pretend otherwise.
7 They have access to it. It's on her desk.

8 MS. CHONG: And Your Honor, what's on my desk is the
9 printed version of the TIFF file, Your Honor. It's not the
10 documents that should have been in compliance with the
11 subpoena.

12 JUDGE GEE: I see. That's enough on this issue.

13 All right. Mr. Frondorf, Respondent want to give its
14 opening statement at this point? Do you want to take a brief
15 recess?

16 MR. BECK: Your Honor, if I could jump, I believe there
17 was some discussion before the cross-examination of the most
18 previous witness about amending the answer to the newly amended
19 complaint.

20 JUDGE GEE: Oh, yes.

21 MR. BECK: If we could get that on the record.

22 JUDGE GEE: Yes. Thank you. Thank you. Would you --
23 would you like to do so now?

24 MR. BECK: Yes. So to my understanding, the second
25 amended complaint paragraph 5A now reads, "On or about April

1 14th, 2022, responded by Jeremiah Mackler, and Amy Quesenberry
2 by phone, interrogated these employees about their protected
3 concerted activities." Respondent denies that amended
4 subparagraph. It's also my understanding that in the second
5 amended complaint subparagraph 5G now is intended to read, "On
6 or about July 14th, responded by Kim Davis by phone and by text
7 message, interrogated its employees about their protected
8 concerted activity." Respondent denies that amended allegation
9 as well. To the extent there are any other changes in
10 paragraphs 5A through G, Respondent denies those allegations in
11 turn.

12 JUDGE GEE: Thank you, Mr. Beck, and I believe, Mr. Beck,
13 you're the one who will deliver the opening statement.

14 MR. BECK: I am, Your Honor. And if it would be
15 acceptable to you and opposing counsel, we would respectfully
16 request that we begin our case-in-chief tomorrow morning,
17 beginning with the opening statement.

18 JUDGE GEE: Let's go off record, please.

19 **(Whereupon, the hearing in the above-entitled matter was**
20 **recessed at 4:20 p.m. until Wednesday, July 12, 2023 at 9:00**
21 **a.m.)**

22

23

24

25



C E R T I F I C A T I O N

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 19, Case Number 19-CA-299573, Starbucks Corporation and Workers United Labor Union International, affiliated with Service Employees International Union, held at the National Labor Relations Board, Region 19, Jackson Federal Building, 915 2nd Avenue, Room 1826, Seattle, Washington 98174, on July 11, 2023, at 9:13 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.

A handwritten signature in blue ink, appearing to read "Brian E. Carlson", is written over a horizontal line.

BRIAN CARLSON

Official Reporter

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 19

In the Matter of:

Starbucks Corporation, Case No. 19-CA-299573

Respondent,

and

Workers United Labor Union
International, Affiliated with
Service Employees International
Union,

Union.

Place: Seattle, Washington

Dates: July 12, 2023

Pages: 195 through 309

Volume: 2

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 19

In the Matter of:

STARBUCKS CORPORATION,

Respondent,

and

WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES INTERNATIONAL
UNION,

Union.

Case No. 19-CA-299573

The above-entitled matter came on for hearing, pursuant to notice, before **BRIAN D. GEE**, Administrative Law Judge, at the National Labor Relations Board, Region 19, 915 2nd Avenue, Room 1826, Seattle, Washington 98174, on **Wednesday, July 12, 2023, 9:10 a.m.**

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Thai Le Douglass	212	233 249	261	262	
Kim Davis	264	274 279			
Sarah Pappin	289 298				

E X H I B I T SEXHIBITIDENTIFIEDIN EVIDENCE**General Counsel:**

GC-11

202

Respondent:

R-1

214

216

R-2

218

220

R-3

222

223

P R O C E E D I N G S

THE CLERK: We're on the record.

JUDGE GEE: Good morning, everyone. It is Wednesday, July 12th, 2023, at 9:11 a.m. We are getting on the record for day 2 of the Starbucks hearing. While we -- before we opened the record today, I asked the parties if they had any news to report about the status of the subpoenaed documents, as well as efforts to bridge the differences between the parties about the contentions of -- pertaining to that document production, such as the format in which the documents are produced, the Agency's ability to convert the TIFF Plus formatted files into a format that the General Counsel could readily search and utilize. And it became clear that the parties stand at fairly different positions in their viewpoints as to the sufficiency of the production of documents.

We will, therefore, begin this morning with the parties stating their positions as to the sufficiency of Respondent's production of documents and compliance with the subpoena. And I will take those positions under advisement and address them at a later time.

At this point, General Counsel, let's -- let's begin with you. Would you -- would you please put on the record the issues the General Counsel sees with regard to any -- any issues pertaining to Respondent's compliance or -- or noncompliance and complete compliance with the subpoena?

1 MS. CHONG: Yes, Your Honor. Respondent has -- has failed
2 to comply with the subpoena and has not produced documents in
3 compliance with your order timely. We received an email at
4 8:59 a.m. on the day of the hearing that contained files in a
5 TIFF format that was specifically not included as an acceptable
6 format in the subpoena. We are entitled to native format
7 documents. And by definition, those are ones that are in
8 the -- in the ordinary course of business, and TIFF files are
9 not the case.

10 The Respondent has also failed to organize or label the
11 responsive documents. Per the subpoena and also in violation
12 of FRCP 34(b)(2)(E), which requires that a party must organize
13 and label the produced documents to correspond to the
14 categories in this request. And we have specific paragraphs in
15 the subpoena from paragraphs four to six that specify the
16 locations.

17 JUDGE GEE: Would you -- would you repeat that rule,
18 please?

19 MS. CHONG: Yes. It's FRCP 34(b)(2)(E). Next, the
20 production is incomplete, as we will demonstrate in the record.
21 Respondent's production includes text messages only without any
22 identifiers, as far as agents or managers or supervisors from
23 Starbucks, with the exception of one text message that has one
24 name of Amy Quesenberry. The production also is missing emails
25 that we also requested and we have GC exhibits to demonstrate

1 that these do exist, along with other text messages that do
2 exist that were not produced, including text messages by
3 Brendan Branson and Kim Davis.

4 Respondent has also failed to produce a custodian of
5 records to talk through the documents and discuss how they
6 procured the production, to discuss what locations they
7 correspond to, and what sources they sought in getting those
8 documents.

9 The Board has already found that this very conduct is in
10 violation, and Respondent has made it clear on the record that
11 it does not intend to produce a custodian of records and has
12 not been in compliance, and will not be in compliance with the
13 subpoena, which was to be returned at 9:00 a.m. yesterday, and
14 it has not done so. So we will be moving for sanctions, Your
15 Honor. And we will be seeking that Respondent be precluded
16 from seeking the admission of evidence that was subpoenaed but
17 not produced. We will be requesting that Respondent be
18 precluded from offering testimony regarding or referencing
19 unproduced documents and that those documents not produced by
20 the subpoena production date.

21 Respondent must be barred from -- well, now they've
22 already cross-examined our witnesses, presumably on documents
23 that we never got from them directly. And we will be
24 requesting that the General Counsel be permitted to rely upon
25 secondary evidence, including hearsay, regarding matters

1 provable by unproduced responsive documents and those documents
2 that were not produced by the subpoena production date. And we
3 will ask that the ALJ draw all appropriate inferences from the
4 fact that Respondent failed to produce or delayed in producing
5 documents responsive to the subpoena with respect to the
6 allegations related to those requests. And we ask that the ALJ
7 strike Respondent's answers with respect to allegations subject
8 to unproduced subpoena documents. And we intend to brief on
9 those points, Your Honor.

10 JUDGE GEE: Okay. Thank you.

11 MS. CHONG: And one more thing, Your Honor. We would like
12 to enter into the record the universe of text messages that
13 Respondent did produce. Clearly Respondent believed this to be
14 relevant and believes it's self-authenticating. So we'd like
15 to enter into the record General Counsel Exhibit 11.

16 MR. FRONDORF: Objection.

17 JUDGE GEE: What is GC-11?

18 MS. CHONG: It's the -- let's see. This is the universe
19 of documents that actually contained any text out of the 312
20 pages. And the remainder of those pages were blank with a big,
21 redacted note at the middle, with no identifiers, no summary of
22 why it's being redacted. And we believe this will be
23 informative for the Judge to determine how it's been in
24 violation and continues to be in violation of the subpoena.

25 MR. FRONDORF: Your Honor, we have -- oh, just one second,

1 please.

2 MS. CHONG: I will also note for the record that other
3 than GC-11, Respondent provided two pages from the Partner
4 Guide, pages 16 and 27, and 16 starts with rest breaks at the
5 top. Page 27 has general policies and standards at the top
6 written. So that was the entirety of their production.

7 JUDGE GEE: Are you done, General Counsel?

8 MS. CHONG: Yes.

9 JUDGE GEE: All right. Thank you.

10 Ms. Multhaup?

11 MS. MULTHAUP: Thank you. The Union joins in the General
12 Counsel's motion for sanctions and request for an adverse
13 inference. The Union served a subpoena on Respondents that was
14 substantially similar to the General Counsel's subpoena.
15 Yesterday, the Respondent made the representation that its
16 production, you know, which it sent yesterday, was, you know,
17 was the full production, that it was in full compliance with
18 the Union's subpoena. We have encountered the same
19 incompleteness issues.

20 Specifically, Union's request number 5 asks for all
21 documents and communications, including but not limited to
22 emails, texts, et cetera between management and workers at the
23 Westlake Drive-Thru store. And the Union's request number 6
24 asked for the same information about the 505 Union Station
25 store. And the Respondent produced nothing in response to



1 number 6 text about the -- between workers and management at
2 the Union Station store and only produced two texts, pursuant
3 to number 5, about the Westlake Drive-Thru store.

4 However, in testimony yesterday, GC Exhibit 9 revealed
5 that there were texts sent between management and workers at
6 the 505 Union Station store, which were responsive to Union's
7 subpoena number 6. And GC Exhibit 6 revealed that there were
8 other texts -- texts sent from management to workers at the
9 Westlake Drive-Thru store pursuant to number 5, which were not
10 produced.

11 And I would represent to the Court that the General
12 Counsel subpoena, hopefully, is numbered similarly, so the same
13 incompleteness applies to the General Counsel subpoena. Thus,
14 the Union would join the motion for sanctions and also ask the
15 Judge to draw all appropriate adverse inferences, especially --
16 yes. Thank you.

17 JUDGE GEE: All right. Thank you.

18 Mr. Frondorf?

19 MR. FRONDORF: Thank you, Your Honor. Is there any
20 particular order in which you would like to go? We have
21 motions for sanctions, we have incomplete subpoenas, we have
22 motion to introduce General Counsel's Exhibit No. 11.

23 JUDGE GEE: Well, I -- I defer to your good judgment.

24 MR. FRONDORF: Okay.

25 JUDGE GEE: It makes sense to me, however, for you to

1 respond to the points General Counsel raised in the order in
2 which she raised them.

3 MR. FRONDORF: Glad to.

4 Your Honor, Counsel for the General Counsel and also for
5 the Union have now had their hour upon the stage to strut about
6 what was sound and fury. It all signifies nothing. We are in
7 compliance with the subpoena. First General Counsel balks at
8 our production at 8:59 a.m. on the date of the hearing.
9 Indeed, it was produced on the date of the hearing, because
10 that is the date and the time prescribed by the subpoena and by
11 the Rules.

12 General Counsel next balks that our -- our production was
13 in TIFF Plus format. She said this was not a permitted format
14 per the subpoena. The subpoena does not say that TIFF Plus
15 format is not appropriate. It simply requests a usable format,
16 which Your Honor, your colleagues, perhaps yourself, sit in a
17 conference, federal judges around the country have all
18 recognized that TIFF Plus format is perfectly fine, usable and
19 reasonable format in which to produce documents.

20 She said that we did not provide documents kept in the
21 ordinary course of business. I will submit that text messages
22 are not kept in the ordinary course of business. That
23 Starbucks does not possess control of the text messages between
24 its assistant store managers and store managers, that these
25 devices are the personal property of those employees, and what

1 they do with those communications are theirs. They are not in
2 our position or control.

3 In keeping with the -- the request of the subpoena, we
4 have fulfilled our obligation by asking those members -- those
5 Starbucks partners who might possess such information to
6 produce it to us. Where they have done so, we have produced
7 the relevant portions per the terms of the subpoena. We are
8 not in violation of this Court's order. Texts. They mentioned
9 the text of Brendan Branson and Kim Davis specifically. Again,
10 we do not own Brendan Branson's phone. We do not own Kim
11 Davis's phone. Kim Davis, as you will hear later this morning,
12 just returned from leave on Monday, and we fulfilled our
13 obligation to request and obtain, as timely manner as we could,
14 all texts which might be reasonably responsive to the subpoena.
15 When we obtained them again, we turned them over.

16 It is also worth noting that the General Counsel served
17 the subpoena on June 6th and the Union served its subpoena last
18 Wednesday. A year or more had elapsed since the alleged unfair
19 legal practices occurred. I do not know if Brendan Branson has
20 a document retention policy on his private phone. I suspect he
21 does not. What he does with those texts is his business until
22 we request them. General Counsel is free to call Brendan
23 Branson. To my knowledge, they did not. The General Counsel
24 is free to call Kim Davis. To my knowledge, they did not.
25 General Counsel is free to subpoena testimony of anyone would

1 like. We now know whose testimony they elected to obtain.
2 They could have chose otherwise; they did not.

3 On the custodian of records issue, let me be clear, one
4 does not exist. If you think there is a custodian of records
5 for Brendan Branson's text messages or Jer Mackler's text
6 messages, Kim Davis's text messages, I would like to know that,
7 and I would like to inform them of that as well. The policies
8 we've produced are the policies you've undoubtedly seen many
9 times before and will see again. And to feign confusion from
10 whence they came is simply among the more dubious assertions
11 I've ever heard.

12 On the matter of the Federal Rules of Civil Procedure. I
13 believe what was cited pertains to requests for production of
14 documents, not the subpoenas in the NLRB. Try again. Taken
15 together, there is no grounds to find that we have not complied
16 fully and in good faith with the General Counsel or the Union's
17 subpoena. Accordingly, there are no grounds for sanctions, any
18 of the sanctions sought by General Counsel or the Union. And
19 as my colleague mentioned yesterday on the slow death of irony,
20 let us pause again to mourn its decline.

21 When the General Counsel objected to us using any
22 documents in our production, but then promptly moved to admit
23 General Counsel Exhibit 11, text messages, which though I've
24 not reviewed the entirety of it, appeared to be from Jer
25 Mackler. There is no foundation laid, no testimony upon which

1 to accept General Counsel's proposed Exhibit 11 into evidence.
2 Should that foundation later be laid, should that testimony
3 exist, the issue may be revisited. At this time, it is
4 premature, and there is no basis whatsoever to admit General
5 Counsel proposed Exhibit 11.

6 Your Honor, I believe that I have addressed all of the
7 points raised by General Counsel and Union. If I've missed
8 one, I apologize. Would you please let me know if I've missed
9 one?

10 JUDGE GEE: I defer to you, Mr. Frondorf.

11 MR. FRONDORF: I think that's it then.

12 JUDGE GEE: All right.

13 MR. FRONDORF: Unless -- if I'm -- I don't mean -- I
14 didn't mean to talk through you, Your Honor, but if I would be
15 able to pose a question to the General Counsel, if there's
16 anything that I missed.

17 JUDGE GEE: Well, she -- okay.

18 MR. FRONDORF: We'll leave it alone. Thank you very much.

19 JUDGE GEE: Yeah. Let's -- let's leave that alone. Let's
20 go off record for one moment.

21 (Off the record at 9:30 a.m.)

22 THE CLERK: We're back.

23 JUDGE GEE: Thank you all for those statements. Those are
24 helpful, too, for my understanding of the parties' positions as
25 to the subpoena and Respondent's compliance with the subpoena.

1 I will take this under advisement and have comments for the
2 parties at a later time. With regard to General Counsel 11, it
3 has been offered. I'm not going to rule on its admission at
4 the present time. With this in the record, let me now ask Mr.
5 Frondorf if Respondent now wishes to present an opening
6 statement.

7 MR. FRONDORF: We do, Your Honor. And my colleague,
8 Ian Beck, will be presenting the opening statement for
9 Respondent.

10 JUDGE GEE: All right. Thank you.

11 Let's go off record one second.

12 (Off the record at 9:33 a.m.)

13 JUDGE GEE: We're back. Mr. Beck, please?

14 MR. BECK: Thank you, Your Honor. Your Honor, the case
15 before you today is about staffing. It's not about metadata or
16 TIFF Plus Plus (sic). It's not about what have been called
17 persistent and harassing communications. It's not about any
18 apparent oversights made by counsel. You've heard testimony
19 regarding several strikes that affected three Starbucks
20 locations in the spring and summer of 2022. You know from the
21 joint exhibits and from the testimony presented yesterday that
22 Starbucks management was informed that the strikes would be
23 taking place sometimes hours or sometimes just minutes before
24 they began. You've seen written statements that were sent by
25 Starbucks management in response to receiving the notice of

1 strike. And you've heard summaries of some of the alleged oral
2 statements that were made.

3 Now, we can test the accuracy of some of the summaries
4 that you heard yesterday, but even if you credit the limited
5 recollection of Counsel for General Counsel's witnesses, there
6 is no word -- world in which these communications were
7 objectively coercive. Uniformly, all the communications that
8 you've heard about drove toward a single guiding idea. Are you
9 coming in to work? You've heard testimony agreeing that the
10 language used in managers' communications was not perceived to
11 be harassing. And you've heard that not a single Starbucks
12 partner, without exception, was disciplined as a direct result
13 of participating in any of the strikes at any of the three
14 subject locations.

15 Counsel for General Counsel contends that Starbucks
16 management's calls and text messages to partners were for the
17 purpose of identifying which partners would be participating in
18 a strike or which ones might cross the picket line. And they
19 make that contention based on the idea that the notices of
20 strike allegedly provided notice of which partners would not be
21 working. But, in fact, Your Honor, you'll hear testimony today
22 that that contention holds no weight. You'll hear that there
23 is at least one partner who was named on a notice of strike,
24 who, in fact, reported to and worked her scheduled shift on the
25 day that the notice of strike indicated the strike would be

1 occurring.

2 It's clear that Starbucks managers were contacting
3 partners for the sole purpose of determining if they could open
4 and operate their stores. Their communications, like this
5 case, were about one thing, staffing. Counsel for General
6 Counsel's arguments to the contrary are simply false, both, as
7 a matter of fact and as a matter of law.

8 And for that reason, we ask that you find that none of
9 the -- none of the alleged 8(a)(1) violations are valid. Thank
10 you.

11 JUDGE GEE: Thank you, Mr. Beck.

12 Let's go off record.

13 (Off the record at 9:36 a.m.)

14 JUDGE GEE: Respondent, would you like to call your first
15 witness?

16 MR. BECK: Yes, Your Honor. Respondent calls
17 Thai Douglass to the stand.

18 JUDGE GEE: Ms. Douglass, please raise your right hand.
19 Whereupon,

20 **THAI LE DOUGLASS**

21 having been duly sworn, was called as a witness herein and was
22 examined and testified as follows:

23 JUDGE GEE: Have a seat, please. Would you state your
24 name for the record and then spell it?

25 THE WITNESS: Sure. My name is Thai Le Douglass, T-H-A-I

1 L-E D-O-U-G-L-A-S-S.

2 **DIRECT EXAMINATION**

3 Q BY MR. BECK: Good morning, Thai. Can I call you Thai?

4 A Sure.

5 Q Thai, are you in an -- a Star -- a partner at Starbucks?

6 A I am.

7 Q How long have you been a Starbucks partner?

8 A So I'll be a Starbucks partner for 23 years on
9 October 13th of this year.

10 Q Congratulations. Where did you start your Starbucks
11 career?

12 A I started my Starbucks career in San Diego, California.

13 Q And over the course of your career with Starbucks, what
14 positions have you held?

15 A I started as barista in 2000. I was a barista for a year,
16 and then I was a shift advisor in Poway, California for a year
17 and assistant manager for a year, eastern manager for 13 years,
18 and I've been in the district manager position for seven years,
19 just this past July.

20 Q Are you a district manager here in Seattle?

21 A I am.

22 Q Is there a particular district that you manage?

23 A Yes, district 2030.

24 Q Okay. And how long have you been the district manager for
25 district 2030?

1 A So I've been a district manager since January 28th of
2 2019.

3 Q In your understanding, what are the duties of a district
4 manager?

5 A So the District manager responsibilities for Starbucks.
6 So we build -- we build capability within our store managers
7 and help through change, right, solve problems for our
8 portfolio of stores and live our mission and values.

9 Q And you -- you spent some time as a store manager as well?

10 A I did.

11 Q In your experience, both as a store manager and now as a
12 district manager, what's the role of a store manager at
13 Starbucks?

14 A So the store manager's role is to create plans so that
15 partners can create the best customer and partner experience.

16 Q Thai, as a store and district manager, are you familiar
17 with the Starbucks partner guide?

18 A I am.

19 Q And you're -- are you familiar with the policies contained
20 within that guide?

21 A I am.

22 Q Okay. Do you know if Starbucks has any policies regarding
23 a minimum number of partners that can be in store?

24 A Yes. For safety, a minimum of two partners in a store.

25 Q Okay.

1 MR. BECK: Your Honor, I believe yesterday we had
2 standing permission to approach witnesses.

3 JUDGE GEE: Yes.

4 MR. BECK: Does the same order remain in effect?

5 JUDGE GEE: It does.

6 MR. BECK: Okay. Then I'm going to be approaching the
7 witness with what has been previously marked as proposed
8 Respondent's Exhibit 1. Would Your Honor like a copy?

9 JUDGE GEE: Sure.

10 Q BY MR. BECK: Thai, could you tell me what document I
11 just handed you?

12 A You handed me the cover of the partner guide, and it looks
13 like page 16 of the partner guide.

14 Q Okay. Are you familiar with the policies that are shown
15 on page 16 of the partner guide?

16 A I am.

17 MR. BECK: Your Honor, at this time, we move to admit
18 Respondent's Exhibit 1.

19 JUDGE GEE: Just one second, please. It's -- any
20 objection?

21 MS. CHONG: I guess it depends on what -- what preceded
22 and followed this. I don't -- it looks like a portion of a
23 section, so I don't know what --

24 JUDGE GEE: Objection?

25 MS. CHONG: What portion is relevant so objection.

1 JUDGE GEE: Objection based on what, incompleteness of the
2 document?

3 MS. CHONG: Yes, Your Honor.

4 JUDGE GEE: All right.

5 And Ms. Multhaup?

6 MS. MULTHAUP: I'm -- am I missing where it's -- so I -- I
7 mean, I -- I guess I would object on relevance, or maybe I'm
8 just not quite understanding.

9 JUDGE GEE: Sure.

10 MS. MULTHAUP: Because it says -- I don't know --

11 MR. BECK: Well, Your Honor, if I may -- if I may
12 proffer?

13 JUDGE GEE: Please.

14 MR. BECK: The third paragraph starts with an asterisk and
15 the word "note" and proceeds to indicate that the Starbucks
16 safety and security guidelines require the presence of at least
17 two partners in the store at all times, which reflects Thai's
18 understanding of Starbucks policy, as she just testified. So
19 this document is just used to help confirm Thai's testimony.

20 JUDGE GEE: All right. That clarification given, let me
21 the ask parties again, General Counsel, any objection?

22 MS. CHONG: What I've -- Your Honor, just based on my
23 understanding of -- of how sections of the partner guide can
24 also appear in other parts of the partner guide, I request that
25 we move for the admission of the entire partner guide.

1 JUDGE GEE: Okay.

2 Ms. Multhaup?

3 MS. MULTHAUP: I -- I think I would just like to know at
4 least what section this is under. It would -- seems like it
5 starts recording time worked after that, and I don't know if
6 this section is in a -- in a break section, in a staffing
7 section. You know, I just think some context would be helpful.

8 JUDGE GEE: Mr. Beck?

9 MR. BECK: Your Honor, the sole purpose of the use of
10 this document is the sentence that I just read. The -- the
11 other portions, the other context is -- is not relevant and
12 doesn't speak on the point that -- that we're discussing here.
13 This particular portion of the partner guide was produced in
14 response to the -- to the subpoenas that we received and is
15 used for the explicit and relevant purpose of confirming
16 testimony regarding safety and staffing minimums in stores.

17 So to the extent there are concerns over what sections
18 this is under or a request for the entire partner guide, that
19 would be completely overbroad and irrelevant and not
20 responsive.

21 JUDGE GEE: All right. This is Respondent 2?

22 MR. BECK: Respondent 1, Your Honor.

23 JUDGE GEE: Respondent 1. All right. Respondent 1 is
24 admitted.

25 **(Respondent Exhibit Number 1 Received into Evidence)**



1 Q MR. BECK: Thai, are you aware of whether or not
2 Respondent's Exhibit 1 reflects the partner minimum you
3 discussed just a few moments ago?

4 A That is correct.

5 Q Okay. And what does this document say about staffing
6 minimums in the store?

7 A Says Starbucks safety and security guidelines require the
8 presence of at least two partners in the store at all times.

9 Q As a district manager, are you familiar with general
10 staffing needs for a store like the Westlake Drive-Thru above
11 and beyond that specific two partner minimum you just read?

12 A I am.

13 Q Okay. In your experience, how many partners would it take
14 to keep a store like Westlake Drive-Thru operational?

15 A So the Westlake Drive-Thru is -- has two levels,
16 basically; a cafe, where you can walk in, and then the back --
17 when you head to the back room, there's about four steps down
18 to the Drive-Thru. So to keep the Drive-Thru only open minimum
19 of four partners, at least. And then for the cafe, depending
20 on the day part, at least one to two partners. So we're
21 looking at opening the whole store, between five and six
22 partners, depending on day part.

23 Q In your experience as a Starbucks partner and as a
24 Starbucks manager, what happens if a store, like Westlake
25 Drive-Thru, is understaffed for any reason?

1 A It is a straining experience for partners, for our
2 customers and just for everyone. Operationally, it's hard.

3 Q Thai, as a Starbucks manager, are you familiar with any
4 policies regarding time and attendance?

5 A I am.

6 Q Okay.

7 JUDGE GEE: And Your Honor, I'm now approaching the
8 witness with what has been previously marked as Respondent's
9 proposed Exhibit 2. And would Your Honor like a copy as well.

10 JUDGE GEE: Thank you.

11 Q BY MR. BECK: Thai, can you tell me what I just handed you
12 this time?

13 A So you handed me again, the cover of the partner guide and
14 page 27 of the partner guide.

15 Q And what policies are shown -- are -- are shown on -- on
16 page 27?

17 A So it's in general policy and standards. It looks like
18 agreement to arbitrate legal disputes, attendance and
19 punctuality and responsibility -- under attendance and
20 punctuality, responsibility to find a substitute.

21 Q And I think the -- the phrase I used was time and
22 attendance. But is the -- is your understanding of the
23 attendance and punctuality policy in the partner guide pertains
24 to time and attendance, as I used it.

25 A Correct.

1 Q Okay. And --

2 JUDGE GEE: Okay. Pause, Mr. Beck. Just one second. It
3 appears that you are reading a portion or a sentence of this
4 attendance and punctuality policy. Is that correct?

5 THE WITNESS: I was reading the -- the caps here. What he
6 asked was on this page.

7 JUDGE GEE: Oh, point me to that.

8 THE WITNESS: Oh, yeah. I read general policy and
9 standards agreement to legal disputes, attendance and
10 punctuality. And then under this little sub --

11 JUDGE GEE: Oh, oh, oh, I see.

12 THE WITNESS: The bold portion.

13 JUDGE GEE: All right. Thank you. Go ahead, Mr. Beck.

14 Q BY MR. BECK: Prior to seeing this document, Thai, are you
15 familiar with the policies that are reflected here?

16 A I am.

17 Q And based on reviewing it now, do they appear accurate, to
18 your understanding?

19 A Under attendance -- attendance and punctuality, correct.

20 MR. BECK: Your Honor, at this time, we move to admit
21 Respondent's Exhibit 2.

22 JUDGE GEE: All right. Any objection, General Counsel?

23 MR. CHONG: I would object that we need the entire partner
24 guide, or at least for the ALJ to take judicial notice of the
25 partner guides found in many other Starbucks cases, because

1 often times language is repeated or different in other portions
2 the partner guide.

3 JUDGE GEE: All right.

4 Ms. Multhaup?

5 MS. MULTHAUP: I would join General Counsel's objection.

6 JUDGE GEE: Mr. Beck, any objections to me doing that, if
7 needed?

8 MR. BECK: Well, Your Honor, the -- the limited scope of
9 our proposed exhibit here is the attendance and punctuality
10 policy. And that was the limited scope that was requested by
11 the subpoenas that we received. So we would contend that the
12 only relevant portion of the policy guide with respect to this
13 line of questioning would be the attendance and punctuality
14 policy we're attempting to omit here.

15 JUDGE GEE: All right. So you don't take me up on my
16 offer?

17 MR. BECK: Respectfully, no, Your Honor.

18 JUDGE GEE: All right. Thank you. Responded 2 is
19 received.

20 **(Respondent Exhibit Number 2 Received into Evidence)**

21 Q BY MR. BECK: Thai, in your general understanding, what's
22 the -- what is -- what does the attendance and punctuality
23 policy require of a partner if they're going to miss a
24 scheduled shift?

25 A So should a partner miss a scheduled shift, they should

1 call the store, speak with their store manager or assistant
2 manager. If neither are present, contact or talk to the shift
3 supervisor.

4 Q As a -- as a Starbucks manager, what's your understanding
5 of why it's necessary for a partner to notify management if
6 they're going to be missing a shift?

7 A One, to find a substitute, and then two, to see how the
8 floor will work, what adjustments may need to be made.

9 JUDGE GEE: And when you say the -- how the floor will
10 work, what do you mean by that?

11 THE WITNESS: Your Honor, that means if -- let's go back
12 to the Westlake Drive-Thru. So if I have six partners and then
13 two partners call out ill, that means we may have to alter
14 operations for the store, meaning turn off MOP. Hopefully, if
15 you're a Starbucks customer and you use MOP or go Drive-Thru
16 only in a Drive-Thru or close the store.

17 JUDGE GEE: I'm afraid I don't know what MOP is.

18 THE WITNESS: Oh, mobile order and pay.

19 JUDGE GEE: Oh, I see. Okay. Thank you. Go ahead,
20 Mr. Beck.

21 Q MR. BECK: And -- and Thai, as -- as a Starbucks manager,
22 are you familiar with whether the company has any particular
23 missions and values?

24 A I am.

25 Q Are you aware if there are any values the company holds

1 regarding how to communicate amongst partners?

2 A I am.

3 Q Okay. If I showed you a copy of the company's mission and
4 values, would you recognize them?

5 A I would.

6 MR. BECK: Well, Your Honor, I'm now approaching the
7 witness with what's been marked as Respondent's proposed
8 Exhibit 3. Here you go.

9 Q BY MR. BECK: Thai, do you recognize this document?

10 A I do.

11 Q Could you tell us what it is?

12 A So this was -- this is our mission and values for -- from
13 the partner guide.

14 Q And are you familiar with the mission and values as set
15 forth on this document?

16 A I am.

17 Q Okay. Do they appear accurate to your recollection?

18 A They are. The -- our values.

19 Q Okay.

20 A Our mission -- our mission has changed.

21 Q Okay.

22 A On the top.

23 Q But under the heading "Our Values," those -- the language
24 there is accurate to your reflection?

25 A Correct.

1 Q Or your recollection thinking?

2 A Yes.

3 MR. BECK: Your Honor, in that case, we would move to
4 amend Respondent's Exhibit 3. I think that is --

5 JUDGE GEE: Any objections?

6 MS. CHONG: Just a quick voir dire, Your Honor.

7 JUDGE GEE: Yes, go ahead.

8 **VOIR DIRE EXAMINATION**

9 Q BY MS. CHONG: Ms. Douglass, I see at the bottom corner,
10 April 2020. Is this the most up to date mission and values
11 document?

12 A I do not know.

13 Q Okay. But as far as you know, it's consistent with your
14 current understanding.

15 A Yes.

16 MS. CHONG: No objection, Your Honor.

17 JUDGE GEE: All right.

18 Ms. Multhaup?

19 MS. MULTHAUP: No objection, Your Honor.

20 JUDGE GEE: Hearing objection, Respondent 3 is received.

21 **(Respondent Exhibit Number 3 Received into Evidence)**

22 **RESUMED DIRECT EXAMINATION**

23 Q BY MR. BECK: Thai, based on your understanding, what
24 are -- what is Starbucks' values when it comes to communicating
25 between partners?

1 A That it's transparent, that it's respectful, that it's
2 clear.

3 Q Are those values that you try to uphold in your
4 communication with Starbucks' partners?

5 A It is.

6 Q Okay. Thai, were you present here yesterday as company
7 representative for Starbucks?

8 A I was.

9 Q Okay. So did you hear testimony regarding a strike that
10 occurred at the Westlake Drive-Thru on June 25th, 2022?

11 A I did.

12 Q Okay. Do you recall that strike taking place?

13 A I do.

14 Q Okay. Who was managing the Westlake Drive-Thru at that
15 time?

16 A During that time it was Cindy Roig.

17 Q And did Cindy have an assistant manager?

18 A Yes, she did.

19 Q Who was that?

20 A Brendan Branson.

21 Q Okay. Prior to June 25th, 2022, did you have any sense
22 that there was going to be a strike taking place amongst
23 partners at that location?

24 A I did not.

25 Q Okay. How did you come to find out there was going to be

1 a strike?

2 A I received an email -- a notice of strike in an email.

3 Q Okay. I think you have some -- some other documents
4 sitting in front of you, a packet there. Could I have you turn
5 to what's been marked in the bottom right corner as
6 Joint Exhibit 6? And let me know when you get there.

7 A I have Joint Exhibit 6.

8 Q Do you recognize that document?

9 A I do.

10 Q What is it?

11 A So this looks like the notice of strike that I received on
12 the morning of June 25th.

13 Q Could I direct your attention to the to line there. Is
14 the first email address listed in the to line your email
15 address?

16 A Correct.

17 Q Okay. And do you know what the second email address
18 listed there is?

19 A That is the store email.

20 Q The store email for Westlake Drive-Thru?

21 A Correct.

22 Q Who has access to the store email?

23 A The store manager and assistant store manager.

24 Q Thai, do you recall when you would have received this
25 notice of strike?

1 A I received this notice of strike roughly around 4:30,
2 5:00.

3 Q Okay. That's when you read the document?

4 A Yeah.

5 Q Okay. From reading the document, did you learn when the
6 strike was going to be starting?

7 A I did.

8 Q When -- when did you understand the strike would begin?

9 A That morning at 5:00 a.m.

10 Q Okay. And did you understand when the strike would -- was
11 scheduled to end?

12 A I did.

13 Q And when was that?

14 A 4:00 a.m. on June 27th.

15 Q After receiving and reading through the notice of strike,
16 what did you do next?

17 A I contacted my leader, Nica Tovey.

18 Q What is Nica's position with Starbucks?

19 A Nika is a regional director of Areatown (phonetic).

20 Q And how did you contact Nica?

21 A Via phone.

22 Q Okay.

23 JUDGE GEE: Just one second. Could you spell that
24 person's name for me, please?

25 THE WITNESS: Sure. First name, N-I-C-A.

1 JUDGE GEE: Yes.

2 THE WITNESS: Last name, T-O-V-E-Y.

3 JUDGE GEE: V-E-Y?

4 THE WITNESS: Yes.

5 JUDGE GEE: And this person's title again?

6 THE WITNESS: Regional director.

7 JUDGE GEE: And is Nica male or female?

8 THE WITNESS: Female. She/her.

9 JUDGE GEE: Okay. Thank you. Go ahead, Mr. Beck.

10 MR. BECK: Thank you, Your Honor.

11 Q BY MR. BECK: When you contacted Ms. Tovey, what did you
12 discuss?

13 A That I received the notice of strike, and I would be
14 calling the partners to see what their plans were for their
15 shifts -- their scheduled shifts.

16 Q Okay. After speaking with Nica, what did you do next?

17 A I was in contact with Brendan Branson.

18 Q That would be the assistant store manager at Westlake
19 Drive-Thru?

20 A Correct.

21 Q Why would you reach out to Brendan and not the store
22 manager, Cindy Roig?

23 A Cindy was out of -- on a day off or on vacation, I
24 believe.

25 Q Okay. And so when you reached out to Brendan, what did

1 you discuss with -- or --

2 MR. BECK: Let me withdraw that.

3 Q BY MR. BECK: How did you reach out to Brendan?

4 A Via phone.

5 Q Okay. And when you spoke with Brendan on the phone, what
6 did you discuss?

7 A That we will be contacting -- that we received a notice of
8 strike and that we would be contacting partners to see who
9 would like to work, and then potentially adjust hours of
10 operations based on the staffing.

11 Q Okay. Thai, I've asked you about two different phone
12 conversations. How confident are you in your recollection of
13 those conversations?

14 A I'm 100 percent confident.

15 Q So after you spoke with Brendan, what did you do next?

16 A I pulled up the list of partners who were working that day
17 and started the calls.

18 Q Okay. When you reached out to partners, how did you do
19 that?

20 A I called them on the phone.

21 Q Okay. Do you remember if you were able to speak with any
22 partners directly?

23 A I did speak to partners directly, whether -- if their
24 voice boxes weren't full, I left a message, and if they called
25 me back, I answered.

1 Q Okay. If you left them a voice message, do you remember
2 what you might have said in that voice mail?

3 A Yes.

4 Q What do you remember you would have said in the voice
5 mail?

6 A That we received a notice of business disruption and what
7 their plans were for their shifts that day.

8 Q Okay. And -- and as I asked you before, Thai, how
9 confident are you in -- in your recollection of -- of the words
10 you would have used in the voice mail?

11 A I'm 100 percent confident.

12 Q Okay. I think you mentioned that there were some partners
13 you were able to speak with on the phone. Do you remember
14 that?

15 A I do.

16 Q Okay. How did -- how do you remember those conversations
17 going?

18 A I remember that some partners called me back, some didn't,
19 which was okay. And some partners did show up to work. The --
20 all the partners were friendly and cordial, respectful and a
21 couple of them just thanked me, said, "Have a great day. See
22 you next time."

23 Q Did any of the partners that you spoke with indicate to
24 you that they were uncomfortable with you having called them?

25 A They did not.

1 Q Did any of them indicate to you that they were
2 uncomfortable speaking with you?

3 A No.

4 Q Did any of them tell you that they thought your
5 communication was inappropriate?

6 A No.

7 Q Okay. I think you mentioned that there was at least one
8 partner who ended up working. Do you remember who that partner
9 was?

10 A Yes.

11 MS. CHONG: Your Honor. I'm sorry. I don't believe that
12 was in the record yet, or did I miss it?

13 THE WITNESS: You -- I believe you missed it.

14 MS. CHONG: Okay. Okay. I'm corrected. Go ahead.

15 Q MR. BECK: Thai, do you recall who the partner was who
16 informed you that they were intending to work that day?

17 A Yes. It's Sue Mahamud.

18 Q Okay.

19 Q Do you recall from reading the notice of Strike that
20 Sue Mahamud was one of the partners named on that document?

21 A Yes. Sue's name is on the notice of strike for June 25th
22 and 26th.

23 JUDGE GEE: Just one second, please. And her name is
24 spelled S-U-E M-A-H-A-M-U-D?

25 THE WITNESS: Correct.

1 JUDGE GEE: That's it.

2 Go ahead.

3 Q BY MR. BECK: Thai, how is it that you remember that Sue
4 worked on June 25th, 2022?

5 A I -- I kept notes of my conversations.

6 Q Okay. And -- but did you speak with Sue directly?

7 A I did. I called, she called me back, and I quite chuckled
8 because she said that she was going to be 30 minutes late, and
9 she had already informed the store that she was going to be 30
10 minutes late for her shift.

11 Q Thai, do you recall if the Westlake Drive-Thru store was
12 operating on Saturday, June 25th?

13 A It was.

14 Q In what capacity?

15 A So we had to close the store. We went Drive-Thru only and
16 closed the store at 12:30.

17 Q Thai, to the best of your recollection, did this strike
18 end at 4:00 a.m. on Monday, June 27th, 2022?

19 A From what I remember, it did.

20 Q Okay. And was the store operational on Monday the 27th?

21 A Yes, it was.

22 Q Okay. In the days that followed, do you recall if any
23 partners received discipline in any form for participating in
24 the strike?

25 A They did not.

1 Q Okay. Any unexcused absences issued?

2 A No.

3 Q Any corrective actions were issued to any partners at the
4 store?

5 A No.

6 Q Thai, what was the purpose that you had in calling the
7 partners?

8 A My intent was to find out if they were going to show up
9 for -- what their plans were for the day so that we can staff
10 the store appropriately and adjust any operations to the store
11 just for the partner and the customer experience.

12 Q Okay. Thai, were you present yesterday for testimony from
13 a partner by the name of Brent Hayes.

14 A I was.

15 Q Do you recall how Brent described the conversation that
16 Brent had with you on June 25th?

17 A That it was short.

18 Q Okay. And do you agree with Brent's testimony regarding
19 the content of your conversation with Brent?

20 A I do not.

21 Q Okay. How do you recall the conversation you had with
22 Brent Hayes?

23 A I called partners and said, "Hey partner," I -- "what is
24 your plan for your", for example, "8:00 to 12:00 shift?"

25 Q And as I've asked you before, Thai, how confident are you



1 that that was the conversation you had with Brent?

2 A I'm confident.

3 Q All right. If I were to ask you a percentage, about how
4 confident are you?

5 A 100 percent confident.

6 Q Okay. I think you mentioned that the purpose of your
7 calls was to identify how the store would operate. Is that
8 correct?

9 A Correct.

10 Q Did you have any other purpose in contacting partners?

11 A No.

12 Q Okay. Why was it important for you to contact partners to
13 determine what they planned to do with their shifts that
14 weekend?

15 MS. CHONG: Objection. Asked and answered.

16 JUDGE GEE: Not -- not this question. Go ahead.

17 THE WITNESS: Could you ask that again?

18 Q BY MR. BECK: Why was it important for you to determine
19 what partners planned to do with their shifts that weekend?

20 A So we can adjust the hours of operations for the store.

21 MR. BECK: Thank you, Your Honor. I have no further
22 questions at this time.

23 JUDGE GEE: All right. Thank you. General Counsel?

24 MS. CHONG: Yes, Your Honor.

25

CROSS-EXAMINATION



1 Q BY MS. CHONG: Ms. Douglass, do you -- did you provide
2 notes of your conversations to -- to Respondent's counsel?

3 MR. BECK: Objection. Relevance?

4 MS. CHONG: That was --

5 JUDGE GEE: Overruled. Go ahead.

6 MS. CHONG: That was requested and included in the
7 subpoena, and --

8 MR. BECK: Your Honor, may I respond on that?

9 MS. CHONG: -- it was not provided --

10 JUDGE GEE: Well --

11 MS. CHONG: -- and I would --

12 JUDGE GEE: Pause. Just pause. One person at a time. It
13 wreaks havoc with the transcript.

14 General Counsel, complete your thought.

15 MS. CHONG: Yes, Your Honor. I want to -- I -- the record
16 to reflect that, again, we are seeing a demonstration of
17 Respondent failing to comply with the subpoena --

18 JUDGE GEE: Which --

19 MS. CHONG: -- specifically paragraph --

20 JUDGE GEE: Which paragraph?

21 MS. CHONG: -- 5.

22 JUDGE GEE: Just give me one second. So --

23 MS. CHONG: Ms. Douglass just testified that she kept
24 notes of her conversations and communications with employees
25 regarding the strike action, and we've not seen any of those.

1 MR. BECK: Your Honor, may I respond?

2 JUDGE GEE: Oh, pause, please.

3 MR. BECK: Of course.

4 JUDGE GEE: You'll get a chance to respond in just a
5 heartbeat.

6 MR. BECK: Of course.

7 JUDGE GEE: But this -- this seeks documents or
8 communications exchanged between employees and management. So
9 General Counsel, are you saying that the meaning of these words
10 is that if there was any communication between a manager and an
11 employee, any documents pertaining to those communications
12 needed to be produced pursuant to paragraph 5?

13 MS. CHONG: Yes, Your Honor. That would be encompassed in
14 this paragraph.

15 JUDGE GEE: All right.

16 Go ahead, Mr. Beck.

17 MR. BECK: Your Honor, my interpretation of paragraph 5 of
18 the Board's subpoena is exactly the same as yours. Documents
19 and/or communications, including but not limited to notes or
20 emails and text messages exchanged between employees and
21 management. The notes that Ms. Douglass has testified about
22 were not exchanged between employees and management.
23 Therefore, in a reasonable reading of that General Counsel's
24 subpoena, we did not determine that those documents were
25 responsive, and therefore, we did not produce them.

1 As we discussed at length yesterday, words matter, and the
2 words of Counsel for General Counsel's subpoena indicate that
3 she was seeking documents or communications exchanged between
4 employees and management. She cannot now attempt to change or
5 insert her own interpretation of the language that she too,
6 until this moment, never divulged and never explained in her
7 subpoena. And she should not be accusing this Counsel for
8 Respondent of now fully complying with language that she
9 herself drafted and chose to include in her subpoena.

10 JUDGE GEE: All right. I understand each party's
11 position.

12 Ms. Multhaup, do you want to comment?

13 MS. MULTHAUP: Thank you. I realize you do not have the
14 subpoena in front of you, but I -- beginning -- I also believe
15 that those notes are responsive to Union subpoena in paragraph
16 5, which is similar;

17 "Documents and/or communications" and limited --
18 "including but not limited to emails, texts or
19 transcribed voicemails between management and between
20 workers and management at the Westlake Drive-Thru
21 store."

22 Any normal reading of that would include, you know,
23 documents about communications between workers and management
24 about the Westlake Drive-Thru store.

25 In -- in addition, in paragraph 8 reads,

1 "All the records kept by Starbucks related to any
2 concerted or protected activities that occurred at
3 the 5th & Pike or Westlake Drive-Thru and 505 Union
4 Station store."

5 Documents kept by Ms. Douglass as an agent of Starbucks
6 about the conversations to the partners about their concerted
7 protected activity clearly would fall under paragraph 8. So --

8 JUDGE GEE: Could -- could I see the -- the Union
9 subpoena, please?

10 MS. MULTHAUP: Thank you. I only have one copy? I don't
11 want --

12 JUDGE GEE: I won't mark on it. I'll just look at it.

13 MR. BECK: Your Honor before -- would you like to review
14 before I respond to Ms. Multhaup's comments?

15 JUDGE GEE: Yes, please.

16 MR. BECK: Okay.

17 JUDGE GEE: Ms. Multhaup, you're citing to paragraph 5 of
18 the Union's subpoena?

19 MS. MULTHAUP: Five and eight, yeah.

20 JUDGE GEE: Five and eight. Okay. So your interpretation
21 of your paragraph 5 is similar to that of General Counsel,
22 which is, it encompasses any manager notes that document any
23 communications during a particular time period between
24 management and employees related to protected concerted
25 activity.

1 MS. MULTHAUP: Yes, Your Honor.

2 JUDGE GEE: I see.

3 All right. Mr. Beck, why don't you respond to -- to both
4 points, which is these documents should have been produced
5 pursuant to Union subpoena paragraphs 5 and then -- and then 7.
6 Discuss them individually, please.

7 MR. BECK: Seven, Your Honor, or --

8 JUDGE GEE: Or -- or, excuse me, eight.

9 MR. BECK: Okay. Well --

10 JUDGE GEE: And -- and pause. Let me just read -- let me
11 just read into the record paragraph 5. Paragraph 5 reads,

12 "Documents and/or communications, including but not
13 limited to emails, text, or transcribed voice mail
14 between management, and between workers and
15 management, at the Westlake Drive-Thru store related
16 to protected concerted activities occurring between
17 April and August" 20 -- "of 2022."

18 Paragraph 8 reads,

19 "All records kept by Starbucks related to any
20 concerted protected activities that occurred at 5th &
21 Pike, Westlake Drive-Thru, and 505 Union Station
22 store between April and August of 2022."

23 Yeah, it -- Mr. Beck, please?

24 MR. BECK: Your Honor, I fully intend to comply with your
25 instruction to address each paragraph individually. But first

1 a comment that applies to both said paragraphs 5 and 8. To the
2 extent that Ms. Multhaup has now explained her interpretation
3 of the requests made in those paragraphs, we do not have access
4 to those interpretations when we review the subpoena that is
5 provided to us. All we have is the language put on the
6 subpoena. And I will note for the record that we did not
7 receive a copy of the Union's subpoena until it was provided as
8 a courtesy on July 6th, just six days ago.

9 Now, addressing specifically sub -- or paragraph 5
10 documents and/or communications between management and between
11 workers and management. Once again, as applied to the Board's
12 subpoena, the notes taken by Ms. Douglass were not between
13 management, nor were they between workers and management.

14 Ms. Multhaup can now contend that she believes that the
15 language of paragraph 5 would have necessarily included
16 documents related to it. But at no point does paragraph 5
17 include language that would cover the notes taken by Thai for
18 her own self keeping. Therefore, the notes that are mentioned
19 in her testimony are not responsive to a request that seeks
20 documents and communications between management and between
21 workers and management.

22 Regarding paragraph 8, records kept relating to any
23 protected concerted activities that occurred. There cannot be
24 notes regarding protected concerted activity because
25 Ms. Douglass is not a Section 2.3 employee. Her notes about

1 talking to employees is not protected concerted activity and
2 her communication with partners about staffing is not protected
3 concerted activity. Therefore, this is not responsive to
4 paragraph 8 because the notes she made regarding her
5 communications with partners about staffing are not records
6 kept regarding protected concerted activity.

7 JUDGE GEE: Thank you.

8 Ms. Multhaup, let me have you address paragraph 8.

9 MS. MULTHAUP: I -- I think paragraph 8 is clear. I
10 mean --

11 JUDGE GEE: How so though?

12 MS. MULTHAUP: Well, to address Mr. Beck's statement.
13 Ms. Douglass was calling workers to ask whether they would be
14 participating in the strike, and that is clearly regarding
15 protected concerted activity. There's no contention that her
16 notes are protected, concerted activity. That's -- that's not
17 relevant. What's relevant is that -- that they were records
18 kept by Starbucks -- Ms. Douglass is an agent of Starbucks --
19 regarding the strike, namely whether employees would be
20 participating in it or whether they would be coming in to work.
21 Thus, it -- it falls under paragraph 8 of the subpoena.

22 MR. BECK: Right. Your Honor, we find that --

23 JUDGE GEE: Let -- let me ask you a question, Mr. Beck,
24 please. You -- you would agree that participating in a strike
25 is a form of protected concerted activity, right?

1 MR. BECK: Yes, Your Honor, I would agree with that point.
2 But I would contend Ms. Douglass' notes, as is the theory of
3 our case, were made regarding staffing. They were not made
4 specifically regarding protected concerted activity. The Union
5 and Counsel for General Counsel's theory is that our
6 communication was regarding protected concerted activity, but
7 as been -- as has been our contention throughout this entire
8 case, that is not the case. Our communications were geared
9 solely toward staffing as Ms. Douglass testified.

10 JUDGE GEE: Right. But you would agree that those two
11 concepts are not mutually exclusive. That is -- that is
12 from -- from Respondent's perspective, it was calling to find
13 out to -- to carry out its obligations to staff its stores.
14 However, what it was asking about, was asking employees about
15 whether they would honor the strike; isn't that right?

16 MR. BECK: Your Honor, in fact, the testimony from Ms.
17 Douglass is that the language she used with 100 percent
18 certainty was that she was aware of a business disruption, and
19 simply asked partners if they intended to work. We
20 respectfully disagree that the contents were mutually
21 exclusive, because we believe that the entire crux of the case
22 is that those concepts are mutually exclusive. Our commun --
23 our contention is that the communications made were solely for
24 the purpose of determining staffing needs, not to determine
25 whether or not anyone was -- anyone was engaging in protected

1 concerted activity.

2 JUDGE GEE: Respondent's position is that they are
3 mutually exclusive in that, I believe, Respondent believes that
4 an employee would not reasonably interpret the act of a
5 supervisor calling them to ask if they were going to work their
6 shift to be -- to amount to interference, restrain, or coercion
7 with regard to Section 7 rights. I understand that, if that's
8 in fact the case. But you would conceive that participating in
9 a strike is -- is protected concerted activity. I think we
10 agree on that.

11 MR. BECK: Well, yes. But -- but I would note that
12 protected concerted activity is a legal finding and it is
13 undefined in the subpoena that was provided.

14 JUDGE GEE: But there's no ambiguity over that, right?

15 MR. BECK: Not presently, Your Honor, no.

16 JUDGE GEE: And -- and Ms. Douglass' notes relate to that,
17 don't they?

18 MR. BECK: We disagree that they relate to protected
19 concerted activity. We contend that they relate to Ms.
20 Douglass' efforts to determine whether or not the Westlake
21 Drive-Thru could operate on the weekend of June 25th and June
22 26th.

23 JUDGE GEE: I understand that -- that is her -- was her
24 subjective goal; I understand that. But isn't it true that
25 they -- they -- questions about somebody honoring a strike

1 relate to protected concerted activity, don't they?

2 MR. BECK: That hypothetical question might, but we don't
3 contend that -- we don't agree that that question was posed.
4 The questions were not regarding participation in a strike,
5 they were regarding intentions to work. Partners could have
6 chosen to take a day off for any reason, and had nothing to do
7 with the strike, but we had an obligation to find out given we
8 had notice of a business disruption to find out if we would be
9 able to operate our stores.

10 JUDGE GEE: I think I understand Respondent's position.
11 Okay.

12 Ms. Multhaup, let me return this to you.

13 MS. MULTHAUP: Thank you, Your Honor.

14 JUDGE GEE: And General Counsel, I'm sorry. We -- we --
15 we will find your objection and -- your objection is based -- I
16 believe your -- your point is this is an instance -- this is an
17 example of Respondent noncompliance with General Counsel's
18 subpoena, in particular, paragraph 5; is that right?

19 MS. CHONG: Yes, that's right. I -- that's it. That's
20 what I want the record to reflect.

21 JUDGE GEE: Okay, I've noted that. Please continue.

22 MS. CHONG: All right.

23 Q BY MS. CHONG: Ms. Douglass, so you have the email address
24 tle@starbucks.com? That's -- that's you?

25 A Yes.

1 Q And you received an email from jaredlbarnett@gmail.com
2 June 25, 2022, at 3:43 a.m. Pacific Time?

3 A Yes.

4 Q And I'm looking at the strike notice here. And if you
5 look at the second page of the strike notice at Joint Exhibit
6 6.

7 JUDGE GEE: I'm sorry, General Counsel, which joint
8 exhibit are you in?

9 MS. CHONG: Joint Exhibit 6.

10 JUDGE GEE: Okay, thank you. Go ahead, please.

11 Q BY MS. CHONG: This -- this message, or notice of strike,
12 came from JL Barnett, correct?

13 A Correct.

14 Q As well as Aaron Meredith?

15 A Correct.

16 Q As well as Deborah Landers?

17 A Correct.

18 Q And Sue Mahamud?

19 A Correct.

20 Q And Brent Hayes?

21 A Yes.

22 Q And you -- you didn't receive any separate notice from any
23 of them that they would be out because they were sick, did you?

24 A No.

25 Q You didn't receive any notice that they would be out

1 because they would be on jury duty?

2 A No.

3 Q You didn't receive a separate notice that they would be on
4 vacation that day, correct?

5 MR. BECK: Objection. Relevance to this line of
6 questioning.

7 JUDGE GEE: Overruled.

8 THE WITNESS: Could you ask that again? Thank you.

9 Q BY MS. CHONG: Yes. You didn't receive notice from any of
10 those individuals that they would be out on vacation, correct,
11 or during this time period?

12 A Correct.

13 Q Okay. And when you made your attempts to reach those who
14 were scheduled that day, I believe that was your testimony?

15 A Correct.

16 Q It sounded to me, and correct me if I'm wrong, that you
17 tried different ways of communicating, correct?

18 A That's incorrect.

19 Q Okay. So you tried to call them?

20 A I did call them.

21 Q Okay. And but for some you left voicemail messages?

22 A If their voice box was not full, correct.

23 Q Okay. And then you would call them again?

24 A No.

25 Q Okay. And for those you did speak with, and so far, I

1 understand you spoke with Sue Mahamud, correct?

2 A Yes.

3 Q You didn't give her specific -- an explicit assurance that
4 no reprisal would be taken for her to respond to you, did you?

5 A I don't understand your question.

6 Q You didn't tell Sue that she would not be disciplined for
7 her responding to you, correct?

8 A The only thing that I said was, "Hi, it's Thai."

9 Q It's a yes or no answer.

10 MR. BECK: Your Honor, I'd ask that the witness be allowed
11 to respond to the best of her ability.

12 JUDGE GEE: Answer. Go ahead and answer.

13 THE WITNESS: Without a yes or no? Can I explain -- may I
14 explain myself?

15 JUDGE GEE: Yes.

16 THE WITNESS: Okay. I just called, and said, "Hey Sue,
17 it's Thai. I received a notice of business disruption for
18 your" -- for example, x to x shift. "What are your plans?
19 Give me a call back." Sue did call me back.

20 JUDGE GEE: So it -- it would be fair to say you didn't
21 give -- you didn't tell Sue Mahamud that the Employer would not
22 retaliate -- retaliate against her in any way for providing
23 answers; is that right?

24 THE WITNESS: I did not say that.

25 Q BY MS. CHONG: And you didn't say she would not be

1 disciplined for participating in the strike, correct?

2 MR. BECK: Objection.

3 JUDGE GEE: What's the basis of that objection?

4 MR. BECK: Candidly, Your Honor, I was going to say asked
5 and answered but admittedly Counsel for General Counsel ended
6 the question somewhat differently than has been asking before
7 but -- so I'll withdraw my objection.

8 JUDGE GEE: Okay, thank you. Why don't you ask it again,
9 please?

10 MS. CHONG: Okay.

11 Q BY MS. CHONG: You didn't -- you didn't inform Sue Mahamud
12 that she would not be disciplined for participating in the
13 strike?

14 A Would you ask that again? I didn't --

15 Q You didn't tell her that she would be disciplined for
16 participating in the strike if she chose -- so choose?

17 A I did not say that.

18 Q And when you spoke with Brent, you didn't inform him that
19 he wouldn't be disciplined for participating in the phone call,
20 correct?

21 A Again, I just asked -- I said the same thing.

22 Q Okay. So you did not?

23 A I did not.

24 Q Okay. And you didn't tell him that he wouldn't be
25 disciplined for striking, correct?

1 MR. BECK: Objection. This is now cumulative. Ms.

2 Douglass has testified, at length, that she used the exact
3 language with every partner she contacted, and that was the
4 extent -- the full extent of her communication with each and
5 every partner.

6 MS. CHONG: Your Honor, this is cross-examination. I'm
7 allowed to ask her the questions in the format that I choose.

8 JUDGE GEE: Overruled. Go ahead.

9 THE WITNESS: Could you ask again? Thank you.

10 Q BY MS. CHONG: So you didn't tell Brent Hayes that he
11 would not be disciplined for striking or not striking, correct?

12 A Correct.

13 Q Okay.

14 MS. CHONG: That's all I have. Thanks.

15 JUDGE GEE: Okay. Thank you.

16 Ms. Multhaup?

17 MS. MULTHAUP: Thank you. I just have a couple questions
18 and before I do that, I would like to just note the -- the
19 prior objection regarding the production of the notes,
20 depending on how you rule, and on the motion for sanctions,
21 that would also apply to any testimony that Ms. Douglass has
22 given pursuant to those notes or the recollection that she has
23 based on her notes, which in my understanding of her testimony,
24 includes the conversation with Sue Mahamud. So I'd just like
25 to put that on the record.

1 MR. BECK: Your Honor, if I may, just to preserve
2 Respondent's position on that, we would, of course, object to
3 and oppose any additional motion for sanctions on those
4 grounds.

5 JUDGE GEE: Thank you.

6 MS. MULTHAUP: Thank you.

7 **CROSS-EXAMINATION**

8 Q BY MS. MULTHAUP: Hi, Ms. Douglass. My name is Marina
9 Multhaup; I'm counsel for the Union.

10 A Hi.

11 Q I just have a couple of questions for you about your
12 testimony. When you received the strike notice via email on
13 the morning of June 25th, did you forward it to anybody?

14 A I don't remember.

15 Q Do you remember if you had earlier email communication
16 about the strike notice that you received?

17 A For June 2 -- I do not remember.

18 Q Okay. You -- how -- how did you know to call Nica Tovey
19 after you got the email with the strike notice?

20 A Because she's my leader and she's -- I just report to her.

21 Q Have you been told if there's at your store, call -- call
22 your leader?

23 A I would inform her, yeah.

24 Q But have you -- have you been told to do that?

25 A Yes.

1 Q Okay. And by who?

2 A By counsel.

3 Q Okay. And when you were speaking with Nica Tovey on the
4 phone, you -- you testified, "I told her I got notice of
5 strikes and I would be calling partners to see if they would be
6 working". Do you -- did the -- did Ms. Tovey tell you to call
7 partners?

8 A No.

9 Q You told Ms. Tovey that you would be calling partners?

10 A Correct.

11 Q And how did you decide to do that?

12 A Well, just to see if we could keep the store open or not,
13 or if we needed to change operations.

14 Q So you had that idea to call the partners on your own
15 accord?

16 MR. BECK: Objection. Asked and answered.

17 JUDGE GEE: Overruled.

18 THE WITNESS: That means I can answer, right?

19 JUDGE GEE: Yeah, I'm sorry.

20 THE WITNESS: Would you ask that again? Thank you.

21 Q BY MS. MULTHAUP: You had the idea to call all the
22 partners and ask if -- if they would be working on your own
23 accord?

24 A On my own accord?

25 Q Yeah.



1 A For this one, yes.

2 Q So no one had instructed you to -- to do that?

3 A For this strike -- notice of strike, no.

4 Q For a different strike did someone tell you to call all
5 the partners and ask if they would be working?

6 A I was trained.

7 Q And what -- what was that training?

8 A It was a --

9 MR. BECK: Objection. Calls for a disclosure -- attorney-
10 client privileged communication.

11 JUDGE GEE: Well, who -- who -- who told you?

12 THE WITNESS: Counsel.

13 Q BY MS. MULTHAUP: And -- and in terms of what counsel told
14 you to ask partners, what was that training you were given?

15 MR. BECK: Your Honor, objection as this question
16 explicitly calls for disclosure of attorney-client
17 communication.

18 MS. MULTHAUP: Your Honor, I'm asking for what -- what
19 counsel told Ms. Douglass to tell partners. That information
20 was -- is not privileged because she told it to partners.

21 MR. BECK: Your Honor, may I --

22 JUDGE GEE: And -- and therefore lost the privilege?

23 MS. MULTHAUP: Correct.

24 JUDGE GEE: Go ahead.

25 MR. BECK: Your Honor, a client following their attorneys



1 counsel does not waive privilege. The -- the question that Ms.
2 Multhaup asked is what counsel told or trained Ms. Douglass in
3 the communication that counsel had with her. The disclosure of
4 that information, regardless of how it may be utilized in the
5 future, is privileged. It does not lose privilege if Ms.
6 Douglass -- if Ms. Douglass moves forward and follows her
7 counsel's advice, but the communications and training she
8 received remain privileged.

9 JUDGE GEE: Why don't you rephrase it?

10 MS. MULTHAUP: Sure, Your Honor.

11 Q BY MS. MULTHAUP: Let's first -- when did this training
12 take place?

13 A Sometime in 2022.

14 Q Do you remember when?

15 A Between January and April, I would say.

16 Q And how many trainings did you participate in regarding
17 said -- regarding how to deal with Union or Union activities?

18 A A couple.

19 Q How many is a couple?

20 A Two.

21 Q Do you remember more than two?

22 A I don't.

23 Q Was it possible there was more than two?

24 A I don't know.

25 Q You don't know or you don't remember?

- 1 A I don't remember.
- 2 Q Okay. How -- where do these trainings take place?
- 3 A A lot of it was calling counsel, verbally.
- 4 Q Okay. And was it just you on the call, or was it --
- 5 A Just me.
- 6 Q Okay.
- 7 A Calling counsel.
- 8 Q So the training that you're speaking of now is just you
- 9 calling counsel with a question?
- 10 A Yeah. Yes.
- 11 Q Were there other trainings where you were participating in
- 12 a prescheduled thing where you would, you know --
- 13 A There was.
- 14 Q Okay. And how many of those were there?
- 15 A I would say two.
- 16 Q Maybe more?
- 17 A I don't recall.
- 18 Q Okay. And where did those trainings take place?
- 19 MR. BECK: Your Honor, relevance.
- 20 JUDGE GEE: Well, okay. But let's find out who conducted
- 21 them.
- 22 Q BY MS. MULTHAUP: Who -- who -- who conducted those
- 23 trainings?
- 24 A Littler.
- 25 Q Okay. And were the trainings regarding how to, you know,

1 deal with partners who were trying to unionize or unionizing
2 partners?

3 MR. BECK: Objection. That questions calls for the
4 disclosure of confidential attorney-client communications.

5 JUDGE GEE: Yeah, that's sustained.

6 MS. MULTHAUP: I'm just asking about the general -- the
7 general subject of -- of the training, and there's, you know,
8 in -- to the extent that this was a training, you know, a -- a
9 tips training basically, that's clearly that's been established
10 would not be attorney-client protected activity.

11 JUDGE GEE: Go ahead and ask this one question, and
12 then -- then we'll find who -- who was there, please.

13 Q BY MS. MULTHAUP: What was the general subject matter of
14 the training?

15 MR. BECK: Your Honor, I reraise my previous objection.

16 JUDGE GEE: All right. That one is overruled. Go ahead.

17 A So personally, I don't know anything -- I didn't know
18 anything about unions, so a lot of it was the history of
19 unions, what it means to be union and, you know, use your tips
20 and vote, things like that.

21 Q And who was present at the trainings?

22 A District managers, store managers, Littler.

23 Q And approximately how many people were there?

24 A In --

25 MR. BECK: Your Honor, relevance. The number of people

1 attending trainings.

2 JUDGE GEE: Well, I -- I -- I'd like to know who was
3 there. So this is a foundational question.

4 A So my district I have, district 2030, at the time was
5 about 12.

6 Q 12 store managers?

7 A Yeah, including me.

8 Q And then -- including you. And then were there other
9 district managers and their store managers present?

10 A If they had to miss it for vacation or being out ill, then
11 they would come. But there were a couple from different
12 districts.

13 Q So but there is kind of one training per district? Is
14 that what I'm understanding?

15 A That's right.

16 Q Okay. And -- and did the -- did the issue of what to do
17 when partners go on strike come up during this training?

18 A No.

19 MR. BECK: Objection. That question calls for the
20 disclosure of attorney-client privileged information.

21 JUDGE GEE: Yeah, it does. Sustained.

22 MR. BECK: And Your Honor, to the extent Ms. Douglass may
23 have began an answer, I'd move to strike that.

24 JUDGE GEE: I'm not going strike -- well, I am going to
25 strike that.

1 Q BY MS. MULTHAUP: So if you -- okay. So -- but sometime
2 before the conversation with Nica Tovey, you had been
3 instructed that when partners go on strike you should call all
4 of them and ask whether they were coming to work, right?

5 MR. BECK: Objection, Your Honor, that questions calls for
6 the disclosure of --

7 JUDGE GEE: That's sustained.

8 MS. MULTHAUP: Your Honor, I -- I -- I think that's what
9 the witness already testified to. I wasn't asking what she --
10 I mean, okay. You -- well, I mean, my question is, you know,
11 how -- whether the witness was instructed to call partners and
12 ask them whether they were coming in to -- to work or not,
13 which -- which -- which she did when she answered yes. So I'm
14 just trying to establish that.

15 JUDGE GEE: Well, it's -- it's clear at this point that
16 the -- the line of questioning you're headed on would -- seeks
17 privileged information. So I just -- I can't permit it. I
18 won't permit it.

19 MS. MULTHAUP: To the extent that -- to the extent that my
20 questions seek information about, you know, how -- okay.
21 I'll -- I'll move on.

22 Q BY MS. MULTHAUP: When you told Nica Tovey that you would
23 be calling partners to see if they would be working, did she
24 say anything in response to that?

25 A No. Let me know what hours of operations you're going to

1 have.

2 Q Did Nica Tovey want to know which partners were coming in
3 and which weren't?

4 MR. BECK: Objection. That question calls for
5 speculation.

6 JUDGE GEE: It does. Just ask what she -- she -- what she
7 asked.

8 Q BY MS. MULTHAUP: Did Nica Tovey ask you to report back
9 who was coming in to work and who wasn't?

10 A No.

11 Q She just asked you for the hours of operation that the
12 store would be open?

13 A Correct.

14 Q Okay. And did you tell her that information?

15 A I did.

16 Q And when was that?

17 A I don't recall.

18 Q Was it before or after you called after all the partners?

19 A After.

20 Q Okay. So after you called all the partners and gathered
21 the information, then you called Ms. -- Ms. Tovey back; is that
22 correct?

23 A I'm not sure if I called or -- or I believe I called; I'm
24 not sure, though. I informed.

25 Q Okay. Maybe informed via email or via text?

1 A I don't recall.

2 Q Okay. Even though you recall with 100 percent certainty
3 what happened in the first call with Nica Tovey, you don't
4 recall the method of communication you used to report back?

5 MR. BECK: Objection. Asked and answered.

6 JUDGE GEE: You have to answer audibly.

7 THE WITNESS: Would you ask that again? Thank you.

8 Q BY MS. MULTHAUP: Sure. Even though you recall with 100
9 percent certainty the details of the conversation you had in
10 the morning with Nica Tovey, you don't recall the manner of
11 communication that you used to report back to Nica Tovey that
12 day; is that correct?

13 MR. BECK: Objection. Asked and answered. The witness
14 has already testified she doesn't remember the method she used.

15 JUDGE GEE: Go ahead and answer that question.

16 A Correct.

17 Q Thank you. You testified that you called partners and
18 some called back and some didn't. We heard testimony yesterday
19 which you also heard that Brandon (sic throughout) Branson, the
20 assistant store manager, also texted some partners; is that
21 correct?

22 A I did share that testimony. Correct.

23 Q Okay. And did you -- did you talk with -- with Mr.
24 Branson about -- I'm going to call; you text these people?
25 Like, how -- how did that work?

1 A No. I entrusted Brendan to find out if partners were
2 going to report to their shift or not, so he could come with a
3 plan to keep the store open, adjust hours of operations, or
4 close the store.

5 Q So when you talked with Brandon after you talked with
6 Nica, did you tell him to text all the partners and ask if they
7 would be coming in?

8 A I did not.

9 MR. BECK: Just a note, Your Honor, I -- I believe Ms.
10 Multhaup is referring to him as Brandon, it's Brendan Branson,
11 just to keep the record straight.

12 JUDGE GEE: Oh, B-R-E.

13 MS. MULTHAUP: Sorry, thank you. It's a tough name.

14 Q BY MS. MULTHAUP: You did not tell Brendan Branson to text
15 all the partners and ask if they were coming in?

16 A I did not.

17 Q What did you mean then you entrusted him to gather that
18 information?

19 A To call.

20 Q Okay. So -- so -- so you told Brandon --

21 A Brendan.

22 Q Brendan, sorry. You told Brendan on the phone to call all
23 the partners and ask if they would be coming in; is that
24 correct?

25 A That is incorrect.

- 1 Q I'm sorry. So what did you tell Brendan?
- 2 A Our plan is to call all the partners. Brendan was working
3 at the store at the time.
- 4 Q Uh-huh.
- 5 A So I took a lot of the calls.
- 6 Q Uh-huh.
- 7 A And then we would call back and say hey, this is what we
8 found out. Who else and gathered it and made a decision on
9 hours of operations.
- 10 Q So do you know how Brendan ended up texting some partners?
- 11 A I do not know how.
- 12 Q Was there, you know, a plan if you couldn't get in touch
13 with some partners to -- to -- via call to text them?
- 14 A There was not a plan like that.
- 15 Q Okay. Did you, at some point, come to understand that
16 Brendan had texted partners?
- 17 A I did not know that.
- 18 Q Okay. Was there a reason that you wanted to call partners
19 instead of texting them?
- 20 A Just so that they can -- so I can talk to them.
- 21 Q Is there -- and no other reason?
- 22 A That's my preferred way of communication.
- 23 Q Okay. Even for those partners that you couldn't -- that,
24 you know, you couldn't leave a voicemail for, you couldn't get
25 in -- in touch with?

1 A That's correct.

2 Q Okay.

3 MS. MULTHAUP: Thank you. No further questions.

4 JUDGE GEE: Thank you.

5 Mr. Beck?

6 MR. BECK: A brief redirect, Your Honor.

7 JUDGE GEE: Sure.

8 **REDIRECT EXAMINATION**

9 Q BY MR. BECK: Thai, you were asked on cross-examination if
10 you discussed discipline or -- or anything with the partners
11 when you spoke with them. Why is it that you didn't discuss
12 discipline, or a lack of discipline, when you were calling and
13 speaking with partners?

14 A I was simply trying to find out if partners were to show
15 up for the shifts so that we could keep the store open and the
16 partners that wanted to work. If the store wasn't open during
17 the time of their shift, if we had to close earlier, for
18 example, at 12:30 and the partner worked at 2, can I move them
19 to a different store. That was -- that was the only reason.

20 Q Thai, when you spoke with partners, did you ever use the
21 word strike?

22 A No.

23 Q Okay. And Thai, to -- to the best of your recollection,
24 were -- was any discipline issued to partners who participated
25 in the strike?

1 A No.

2 MR. BECK: Thank you. No further questions.

3 JUDGE GEE: General Counsel.

4 **RECROSS-EXAMINATION**

5 Q BY MS. CHONG: When you did make those calls, again --
6 I -- you didn't -- and I know earlier I asked on two specific
7 individuals, but because Respondent's counsel raised these
8 calls overall, and whether you asked about discipline, did you
9 inform all those partners that you did reach whether they were
10 on the schedule or not, that they would not be disciplined for
11 talking with you?

12 MR. BECK: Objection, Your Honor, that question misstates
13 the testimony. Ms. Douglass has already testified that she
14 only contacted partners who were scheduled. To the extent
15 Counsel for General Counsel is asking whether or not Ms.
16 Douglass made comments or statements to partners who were not
17 scheduled, her testimony indicates that she did not communicate
18 with those partners at all.

19 MS. CHONG: Your Honor, my question was that earlier I had
20 asked about two specific -- specific individuals. But my
21 question now, is whether of those that she did speak with,
22 outside -- outside of those two, assuming there were, and I
23 said whether they were on the schedule or not, and if they --
24 if it was only that you were -- they were on the schedule, that
25 those individuals who were on the schedule, were the ones that

1 you called, my question is, did you inform them that they would
2 not be disciplined for speaking with you?

3 JUDGE GEE: For the individuals you spoke with -- other
4 than the two you've already testified about --

5 THE WITNESS: Uh-huh.

6 JUDGE GEE: -- did you tell any of those other individuals
7 that they would not be disciplined?

8 THE WITNESS: Did I tell any of the other individuals that
9 they would not be disciplined?

10 JUDGE GEE: Correct.

11 THE WITNESS: No.

12 JUDGE GEE: Okay.

13 MS. CHONG: Nothing further, Your Honor.

14 JUDGE GEE: All right.

15 MS. MULTHAUP: Nothing further.

16 MR. BECK: Thank you, Ms. Douglass.

17 JUDGE GEE: Thank you very much.

18 All right. It is 10:50. All right. Okay. Okay, let's
19 take a nine-minute break and return at 11.

20 MR. BECK: Yep.

21 JUDGE GEE: Thank you.

22 (Off the record at 10:50 a.m.)

23 JUDGE GEE: We're back from our break. It is 11:02.

24 Respondent, would you like to call your next witness?

25 MR. FRONDORF: Yes, Your Honor. We'd like to call Kim

1 Davis.

2 JUDGE GEE: All right. Ms. Davis, come on up, please.

3 Raise your right hand.

4 Whereupon,

5 **KIM DAVIS**

6 having been duly sworn, was called as a witness herein and was
7 examined and testified as follows:

8 JUDGE GEE: Thank you. Have a seat, please, and state
9 your name for record and then spell it.

10 THE WITNESS: I'm Kim Davis, and it's K-I-M D-A-V-I-S.

11 JUDGE GEE: Okay. Mr. Frondorf, proceed please.

12 MR. FRONDORF: Thank you, Your Honor.

13 **DIRECT EXAMINATION**

14 Q BY MR. FRONDORF: Good morning, Kim.

15 A Hi.

16 Q Are you currently employed by Starbucks?

17 A Yes.

18 Q And what is your current role or title at Starbucks?

19 A Store manager.

20 Q And how long have you been employed -- employed by
21 Starbucks?

22 A 16 years.

23 Q And in those 16 years, what roles -- positions have you
24 filled with Starbucks?

25 A I was a barista, shift supervisor, assistant manager,



1 store manager, and then about a year ago I was an operations
2 coach for the area, and now I'm a store manager again.

3 Q When you said a year ago you were the operations --
4 operations coach?

5 A Um-hum.

6 Q And would that have been --

7 JUDGE GEE: Pause, pause, pause. When -- when you mean to
8 agree, or say yes, kindly say yes as opposed to uh-huh. Thank
9 you.

10 THE WITNESS: Yes.

11 MR. FRONDORF: The court reporter here is taking down
12 everything and so he needs to hear a verbal response.

13 THE WITNESS: Okay.

14 Q BY MR. FRONDORF: Were you an area -- I'm sorry, what did
15 you say it was again?

16 A Area operations coach.

17 Q Were you an area -- area operations coach in July of 2022?

18 A Yes.

19 Q And did the area that you covered as operations coach,
20 include the store located at 505 Union Station?

21 A Yes.

22 Q Kim, when was the first time you and I met?

23 A Monday.

24 Q Had we talked prior to Monday?

25 A No.

1 Q Had we communicated prior to Monday?

2 A No.

3 Q Kim, I apologize for asking this, but the first time we
4 talked on Monday; why was that?

5 A I was on a leave of absence for the last three months.

6 Q And what was the cause of -- or the reason for that leave
7 of absence?

8 A My father was sick and then passed away.

9 Q I'm sorry to hear that.

10 A Thank you.

11 Q Does Starbucks -- in -- in the many roles that you filled,
12 you're familiar with Starbucks' policies and practices as they
13 pertain to partners in stores; is that correct?

14 A Yes.

15 Q Does Starbucks have a policy and practice of not
16 contacting its partners while they are out on leave?

17 A Yes. They do not contact us.

18 Q Okay. And is that why you didn't hear from us while you
19 were on leave?

20 A Yes.

21 Q I believe on the witness stand in front of you, you should
22 have some papers. If you could find the one that has been
23 marked Respondent's Exhibit Number 3?

24 A Okay.

25 Q And is that -- at the top of that does that say our



1 mission and values?

2 A Yes.

3 Q Explain what this document is and do you recognize the
4 document?

5 A I do recognize the document. And it's the company mission
6 and the values that we live by to support that mission as
7 partners.

8 Q And do you strive to abide by this policy?

9 A Yes.

10 Q And does that include, you'll see there under our values,
11 being present, connecting with transparency, dignity, and
12 respect?

13 A Yes.

14 Q Thank you. Also on this stand there, you should have
15 what's been marked as Respondent's Exhibit number 2.

16 A Okay.

17 Q It's a two-page document. The first page of the partner
18 guide. Can you turn to the second page and let me know if you
19 recognize this document?

20 A Yes.

21 Q And what is this?

22 A It's the Starbucks partner guide for atten -- or standards
23 for attendance and punctuality.

24 Q Okay. And in the roles that you've played as store
25 manager, assistant store manager, and area operations coach, do

1 you abide by and enforce this policy?

2 A Yes.

3 Q And are partners expected to follow this policy?

4 A Yes.

5 Q Thank you. Are you familiar with staffing minimums at
6 Starbucks stores?

7 A Yes.

8 Q And what is a staffing minimum?

9 A It's the minimum number of partners needed to operate the
10 store.

11 Q And what is the bare minimum number?

12 A Two partners.

13 Q And why -- why have a bare minimum -- or why have staffing
14 minimum policy at all?

15 A To establish the best -- or the environment for our
16 partners and our customers so we can deliver the experience.

17 Q Thank you.

18 A Um-hum.

19 Q Do you recall on July 11th participating in a team's call
20 with Starbucks partners at the 505 Union Station store?

21 A Yes.

22 Q And what was the purpose of that call?

23 A To share with the team that the store would be closing.

24 Q And prior to July of 2022, was it common for you to
25 communicate with Starbucks partners about staffing?

1 A Yes.

2 Q Can you give me some instances, prior to July of 2022,
3 where you communicated with partners about staffing?

4 A Yes. I ran several stores. So power outages where the
5 business had to shut down, incidents where the business had to
6 shut down, partners being sick, so finding coverage for their
7 shifts, snowstorms, all sorts.

8 Q So whenever there was an issue with staffing, you would
9 reach out to the partners scheduled, and ask if they were able
10 to work their scheduled shift; is that correct?

11 A Yes.

12 Q Now, I understand -- were you notified of a strike that
13 took place on July 14th, 2022, at the 505 Union Station store?

14 A Yes.

15 Q And how were you notified of that?

16 A A phone call.

17 Q Okay. Were you -- did you ever read, or come to possess,
18 the notice of strike -- a written notice of strike?

19 A No.

20 Q So you just learned about this from taking that phone
21 call?

22 A Um-hum. Yes.

23 Q All right. And do you recall about what time you learned
24 of this strike?

25 A 4:30 or 5 in the morning, very early.

1 Q And as a result of learning about this strike, what if
2 anything, did you do?

3 A I started calling partners who were scheduled to work.

4 Q Okay. And what was the purpose of those calls?

5 A To see if they were intending to work, and if they were,
6 follow-up questions on when, and how, and where.

7 Q Do you recall calling a partner by the name of Erin, now
8 goes by Ari Bray?

9 A Yes.

10 Q It's in front of you there, but I'm looking for General
11 Counsel's Exhibit 8. It is a call log with your name in the
12 middle of the page. It looks like this.

13 A I'm looking; I'm looking. Yes, found it.

14 Q Okay. And do you see there, there are two instances where
15 on July 14th, 2022, you attempted to call Ari?

16 A Yes.

17 Q Let's take the first one there. Do you recall why you
18 were calling Ari on July 14th, 2022?

19 A To find out if they intended to work their scheduled
20 shift.

21 Q Okay. And did you get a hold of Ari?

22 A No.

23 Q And it shows there that there's a second call, also a
24 missed call. Can you tell me about that?

25 A I wanted to make sure I had the right number; I wasn't

1 sure.

2 Q So the second call is because you weren't sure you had
3 called the right person?

4 A Correct.

5 Q Did you also call a partner by the name of Jameson Hart?

6 A Yes.

7 Q And was Jameson scheduled to work on July 14th, 2022?

8 A Yes.

9 Q Yesterday, Jameson testified that during that phone call
10 you asked him when the strike was going to be over, and when he
11 was going to come back; is that accurate?

12 A No, I don't recall that.

13 Q What do you recall saying to Jameson?

14 A If he intended to work his scheduled shift.

15 Q And do you recall a response from him?

16 A No.

17 Q Did you have an any further communication with Jameson
18 regarding work on July 14th, 2022?

19 A No.

20 Q Now, you were making these phone calls as a area
21 operations coach; is that correct?

22 A Yes.

23 Q Can you explain to me why you were doing that?

24 A Store manager and district manager were on vacation, they
25 were out of town, so to support the team while they were away

1 during this time, I stepped in to support.

2 Q You stepped in because the store leadership was out?

3 A Correct.

4 Q And is that common?

5 A Yes.

6 Q And is that common for someone in the role of area
7 operations coach?

8 A Yes.

9 Q Was anyone disciplined for failing to work as a result of
10 the July 14th, 2022 strike?

11 A No.

12 Q Kim, we talked about the phone calls you made to Ari and
13 Jameson, was that done from your personal cell phone?

14 A Yes.

15 Q Kim, there was also testimony yesterday of a text message
16 that was sent to a Starbucks partner on July 14th, 2022. Would
17 that text message also have been from your personal cell phone?

18 A Yes.

19 Q Kim, did you -- do you have texts going back two weeks
20 prior to July 14th, and extending two weeks from July 14th,
21 2022?

22 A Do I have them?

23 Q Um-hum, between partners that work for Starbucks?

24 A Oh, no.

25 Q Did you look?



1 A Yes.

2 Q Is your personal phone your personal phone, meaning that
3 you are the sole owner of it?

4 A Correct. Yeah. Yes.

5 Q And Kim, this may sound like a -- a curious question, an
6 odd question but these are odd times. Do you employ a
7 custodian of records for your own phone?

8 MS. MULTHAUP: Objection. Improper question. Irrelevant
9 and argumentative.

10 JUDGE GEE: Do you know what a custodian of records is?

11 THE WITNESS: No.

12 JUDGE GEE: All right.

13 Q BY MR. FRONDORF: Are we satisfied that you do not have a
14 custodian of records then for your phone?

15 MS. MULTHAUP: Objection. Same objection.

16 MR. FRONDORF: It's actually a different question.

17 JUDGE GEE: Good. Thank you for -- for -- for not
18 answering. Go ahead and answer that question.

19 THE WITNESS: Can you say it one more time?

20 Q BY MR. FRONDORF: Yeah. Do you have a custodian of
21 records for your personal phone?

22 A I don't think so; I don't know what that is.

23 MR. FRONDORF: Okay. Thank you. I have no further
24 questions.

25 JUDGE GEE: General Counsel.

1 MS. CHONG: Yes.

2 **CROSS-EXAMINATION**

3 Q BY MS. CHONG: Ms. Davis, can I call you Ms. Davis?

4 A Yes, yeah.

5 Q Who is your mobile carrier?

6 A AT&T.

7 Q Was that your mobile carrier at the time you're talking
8 about?

9 MR. FRONDORF: Objection.

10 JUDGE GEE: What the basis?

11 MR. FRONDORF: Relevance. She's seeking the mobile
12 carrier to presumably serve a subpoena or not. At any rate, it
13 doesn't matter.

14 MS. CHONG: That is not why I'm -- I'm allowed to --

15 MR. FRONDORF: She's have a --

16 JUDGE GEE: Pause. I need to rule on things. So let me
17 hear -- your objection is -- the basis of your objection is
18 what?

19 MR. FRONDORF: Relevance.

20 JUDGE GEE: Okay.

21 General Counsel?

22 MS. CHONG: Your Honor, Respondent made it relevant with
23 the question that he just posed on Ms. Davis about whether she
24 looked back at her text messages to see how far back it went,
25 and I'm allowed to question on that.

1 MR. FRONDORF: That was not her testimony.

2 JUDGE GEE: All right. Ask your question again, please.

3 MS. CHONG: Yeah. And to the extent it's unclear, I'd
4 like to clarify the record.

5 Q BY MS. CHONG: So Ms. Davis, did you look back to see if
6 you did have text messages going back to July of 2022?

7 A So relevant to like all text messages?

8 Q Related to 505 Union Station?

9 A I did. Could you say that again? Did I look back?

10 Q Yes.

11 A Yes, I did look back.

12 Q Did you -- did you look at your phone records, your phone
13 statements by AT&T?

14 MR. FRONDORF: Objection.

15 JUDGE GEE: Basis.

16 MS. CHONG: It's just a yes or no.

17 JUDGE GEE: No, no, no. Let me rule on it.

18 MS. CHONG: Okay.

19 JUDGE GEE: What's the basis?

20 MR. FRONDORF: Relevance. We also don't have foundation
21 that those records will reflect anything?

22 JUDGE GEE: Go ahead. Ask your question again?

23 Q BY MS. CHONG: Did you -- did you make any effort to look
24 to see if your phone carrier had statements, or that you could
25 access statements or billing records going back to July of

1 2022?

2 MR. FRONDORF: Objection. Foundation.

3 JUDGE GEE: Overruled. Go ahead and answer the question.

4 A I looked at my phone, and they weren't on my phone.

5 Q BY MS. CHONG: Okay. So that was the extent of your
6 search?

7 A Yes.

8 Q Okay. And related to the -- to the July 14 time period --
9 July 14, 2022 time period, you didn't get any notice of a power
10 outage, did you?

11 A Say that again. I'm sorry.

12 Q You didn't get any notice about a power outage?

13 A In July?

14 Q Right.

15 A No.

16 Q You didn't get notice that employees specifically were
17 sick that day, correct?

18 A There were partners who were sick that week, but I don't
19 recall the day.

20 Q Okay. And you testified also that in prior communications
21 you also will make calls because of snowstorms. Was there a
22 snowstorm in that July 2014 -- July, 14, 2022 period?

23 MR. FRONDORF: Objection.

24 JUDGE GEE: Basis.

25 MR. FRONDORF: Doesn't pass the LAMP test.



1 JUDGE GEE: Just answer the question.

2 A No.

3 Q Okay. So when you called -- when you attempted to reach
4 Erin Bray, did you inform Ms. Bray that by calling -- in the
5 text message that you sent, did you inform her that calling you
6 back would not result in any reprisal, discipline, regardless
7 of the outcome of her response?

8 A I do not recall.

9 Q Okay. I'm going to have you look at General Counsel
10 Exhibit --

11 MR. FRONDORF: Objection. This is beyond the scope of
12 direct.

13 JUDGE GEE: It -- it is, but I'm going to permit a few
14 questions.

15 Q BY MS. CHONG: I'd like to have you take a look at GC-9,
16 and that's also in front of you. It's a lot of black ink.

17 A Bear with me; I'm so sorry. Okay.

18 Q And I'm going to have you look at the third page.

19 A Okay.

20 Q And if you want to look at the first page just to
21 establish that this is a text string that you were on you can
22 do that.

23 A Okay.

24 Q And then please go to the third page. I want to see if
25 that, in any way, refreshes your memory or recollection of

1 whether you gave Erin Bray any assurance or statement that she
2 would not be disciplined by giving you a call back?

3 MR. FRONDORF: Objection.

4 JUDGE GEE: What's the basis?

5 MR. FRONDORF: The document speaks for itself. There it
6 is in black and white.

7 JUDGE GEE: So can there be a stipulation that she did
8 not?

9 MS. CHONG: I would hope so.

10 JUDGE GEE: Well, I'm asking Respondent's counsel.

11 MR. FRONDORF: It's their exhibit.

12 JUDGE GEE: I'll take that as a no, so overruled.

13 MS. CHONG: Okay.

14 JUDGE GEE: Go ahead. Ask the question again.

15 Q BY MS. CHONG: Beyond the text message, did you in any
16 other format, inform Erin Bray that she would not be
17 disciplined by responding about whether she would -- whether
18 calling back would result in any discipline?

19 A I do not recall.

20 Q You do not recall whether you spoke with Ms. Bray?

21 A I believe I spoke with her at one point, but I don't
22 remember saying specific words -- like it's a year ago, I don't
23 really recall.

24 Q Okay. But beyond the text -- there's no more text related
25 to this, correct?

1 A I don't believe so.

2 Q Okay. And with regard to Jameson Hart, did you -- did you
3 inform Jameson that there would not be discipline based on the
4 response that they gave?

5 A I do not recall.

6 Q Okay. But you can't recall whether you specifically said
7 that -- or explicitly said that?

8 A No.

9 Q Okay.

10 MS. CHONG: That's all I have.

11 JUDGE GEE: Okay.

12 All right. Ms. Multhaup.

13 MS. MULTHAUP: Thank you.

14 **CROSS-EXAMINATION**

15 Q BY MS. MULTHAUP: Hi, my name is Marina Multhaup. I'm
16 counsel for the Union. I just have a couple of questions for
17 you. You said that you were a store manager before you were an
18 area operations coach; is that correct?

19 A Yes.

20 Q Okay. And have you ever been an area operations coach
21 before?

22 A No.

23 Q Is it like a temporary role?

24 A Yeah.

25 Q Okay.

1 A Yes.

2 Q And how -- was it like a job description you answered, or
3 how did you discover that role?

4 MR. FRONDORF: Objection. Relevance.

5 JUDGE GEE: Which is background. Go ahead.

6 THE WITNESS: Can you say it again? I'm sorry.

7 Q BY MS. MULTHAUP: Yeah, did you like respond to a job post
8 for that role, or how -- how did you -- how did you become into
9 that role?

10 A Yes. There was a position posted that I applied for and
11 interviewed for.

12 Q And what was the duration of the position?

13 A Six months.

14 Q And do you remember when it started?

15 A End of June.

16 Q End of June, 2022?

17 A Yes.

18 Q And so through like December of 2022?

19 A Correct.

20 Q Okay. And -- and it says area operations coach. Does
21 area have a specific meaning in Starbucks world?

22 A It does.

23 Q What does it mean?

24 A It's a geographic like business unit. And so the area I
25 served was Seattle.

1 Q And so -- and so -- and so what was the -- what was the
2 point of the area operations coach, the position you said that
3 you held?

4 MR. FRONDORF: Objection.

5 JUDGE GEE: Relevance?

6 MR. FRONDORF: Yes. We're very far afield at this point.

7 JUDGE GEE: What is the relevance?

8 MS. MULTHAUP: I'm trying to establish what her role was
9 at the time when she engaged in the, you know, allegations in
10 the complaint.

11 JUDGE GEE: Overruled. Go ahead. Just a few more
12 questions.

13 THE WITNESS: Say it again. I'm sorry.

14 Q BY MS. MULTHAUP: Yeah. What was the -- what was the
15 point of the -- of the temporary role that you filled?

16 A It was to develop my -- or a developmental position for me
17 to support multiple stores at once versus running a single
18 store.

19 Q And were your -- I understand in -- in -- in July you were
20 kind of just stepping in for a store manager that was on
21 vacation; is that -- is that fair to say?

22 A I was supporting a team that needed a leader to support
23 them.

24 Q Okay. And were there other stores that you were also
25 supporting?

1 A Yes.

2 Q And were those also Union stores?

3 MR. FRONDORF: Objection.

4 JUDGE GEE: Basis.

5 MR. FRONDORF: Relevance. How far afield are we going to
6 go?

7 JUDGE GEE: Yeah. What is the relevance?

8 MS. MULTHAUP: I'm trying to understand whether this was
9 a -- whether at the time that she was engaged in the
10 allegations in the complaint, this was, you know, pursuant to a
11 strategy about how to deal with unions, or just the --

12 JUDGE GEE: Oh, I'll -- I'll sustain this. Go, go ahead,
13 please.

14 Q BY MS. MULTHAUP: How many other stores were you
15 supporting at this time?

16 MR. FRONDORF: Objection.

17 JUDGE GEE: Overruled.

18 A To the best of my recollection at this time, I believe, it
19 was three -- four -- four stores.

20 Q BY MS. MULTHAUP: And what were the stores?

21 MR. FRONDORF: Objection. I believe it doesn't matter.

22 JUDGE GEE: What's your basis?

23 MR. FRONDORF: Relevance. Number perhaps, but the names?

24 JUDGE GEE: Overruled.

25 A To the best of my recollection, it was 505 and then

1 Heritage Market, which was encompassing three different stores
2 and their leaders at that time.

3 Q BY MS. MULTHAUP: Okay. And again this time frame is
4 June, 2022 -- or like, late June -- so July, 2022?

5 A Late June to --

6 Q Early December, 2022?

7 A Correct.

8 Q Okay. And at that point, the -- okay, the -- the Heritage
9 Market, that's the Pike Place, 1st & Pike, and 1st and
10 University stores?

11 A Yeah.

12 Q Okay. And they had just undergone a transformation to
13 consolidate themselves into the Heritage Market district; is
14 that correct?

15 A Yes.

16 MR. FRONDORF: Objection.

17 MS. MULTHAUP: I'll move on.

18 JUDGE GEE: That's okay. It resolved itself. So counsel
19 is going to move on to a new subject.

20 THE WITNESS: Thank you.

21 JUDGE GEE: But thank you for holding your answer.

22 Q BY MS. MULTHAUP: How were you informed about the strike
23 at 505?

24 MR. FRONDORF: Objection. Asked and answered.

25 JUDGE GEE: Ms. Multhaup has not asked that question. Go

1 ahead. I'm sorry. Overruled. Go ahead; answer the -- the
2 question.

3 THE WITNESS: I'm sorry. Can you say it again?

4 Q BY MS. MULTHAUP: Yeah. How were you informed about the
5 strike at 505?

6 A A phone call.

7 Q And who?

8 A Katie Akers.

9 Q And who's that?

10 A A district manager.

11 Q Was she the district manager for 505?

12 A She was supporting because their district manager was on
13 vacation.

14 JUDGE GEE: Now, could you spell her name, please?

15 THE WITNESS: Yeah. Her last name -- her first name is
16 Katie, so K-A-T-I-E. Last name is A-K-E-R-S.

17 JUDGE GEE: Okay. Thank you. Go ahead, Counsel.

18 Q BY MS. MULTHAUP: And what did Katie say?

19 MR. FRONDORF: Objection.

20 JUDGE GEE: What's the basis?

21 MR. FRONDORF: Relevance. Hearsay.

22 JUDGE GEE: Overruled. Go ahead and answer. What did
23 Katie say?

24 A To the best of my recollection, Katie shared that they had
25 received a strike later -- strike letter late the night

1 before -- I don't -- to the best of my recollection that they
2 received a strike letter, and that we needed to -- to speak to
3 partners to ask their intention of working planned shifts or
4 not.

5 Q BY MS. MULTHAUP: And did she instruct you -- instruct you
6 to do something about that?

7 A To call partners.

8 Q Okay.

9 A To see if they were working.

10 Q And did -- did you say anything back to her?

11 A I said, okay; I'm pretty sure -- I -- you know, yeah.

12 Q Okay. Did you ask her any questions well, like what
13 should I say, or -- or who should -- who should I call or
14 anything like that?

15 A I do not recall.

16 Q Did Katie say whether to call all partners or just
17 partners who were scheduled?

18 A I do not recall.

19 Q Okay. You said that you called Ari Bray, formerly known
20 as -- as Erin Bray, twice because this -- because you -- you
21 testified you made the second call because you weren't sure
22 that you had the right number; is that correct?

23 A Yes.

24 Q But you had been texting with Ari the day before; isn't
25 that correct?

1 A Yeah. Yes.

2 Q Okay. So -- okay. And as far as your call with Jameson,
3 you testified that you -- as far as your call with Jameson, you
4 don't recall what his response to your question is; is that
5 right?

6 A Yes.

7 Q Okay. But you -- it's your testimony that you do recall
8 that his recollection as recounted by counsel of your call is
9 incorrect?

10 A I -- can you -- I'm sorry. Can you say that again?

11 Q Counsel represents to you that Jameson describes what you
12 said on the phone and you said that that wasn't true; do you
13 remember that?

14 A Yes.

15 Q Okay. But you don't recall what Jameson said in response
16 to your question?

17 A No.

18 Q Okay.

19 MS. MULTHAUP: No further questions. Thank you.

20 JUDGE GEE: All right. I don't understand. If -- if you
21 were texting with Ms. Bray, how come you were unsure about her
22 cell phone number?

23 THE WITNESS: I recollect the voicemail not working, or
24 not showing up, and so I tried again to see if it was the right
25 one.

1 JUDGE GEE: And when you made that initial call, does
2 it -- did it say the person's name? For example, Ari Bray?

3 THE WITNESS: Not that I remember.

4 JUDGE GEE: I see. And when the voicemail came up, could
5 you leave a voicemail?

6 THE WITNESS: I don't believe I did that. Yeah.

7 JUDGE GEE: Was there a greeting? Hi, this is Ari?

8 THE WITNESS: I don't recall there being one.

9 JUDGE GEE: Okay. And then -- and then so why were you
10 unsure about whether or not you called the correct number?

11 THE WITNESS: There was no verification, I guess, that the
12 voicemail went through.

13 JUDGE GEE: Oh. Was your uncertainty about who received
14 the call, or was your uncertainty about whether or not the call
15 was actually transmitted?

16 THE WITNESS: I think both. Like it was ringing and I
17 don't know what happened. Like it just stopped. And so I
18 tried again.

19 JUDGE GEE: Oh, I see. It abruptly ended.

20 THE WITNESS: Yeah.

21 JUDGE GEE: In a -- in a way that caused you some
22 uncertainty.

23 THE WITNESS: Yeah.

24 JUDGE GEE: And then so -- let me -- let me just take a
25 look at this. How much -- how much of a time gap was there

1 between your first and second call to -- to Ms. Bray?

2 THE WITNESS: To the best of my recollection it was very
3 close together.

4 JUDGE GEE: Such as?

5 THE WITNESS: It -- I was disconnected and I tried again.

6 JUDGE GEE: Almost instantaneously?

7 THE WITNESS: From what I remember, yeah.

8 JUDGE GEE: Okay.

9 THE WITNESS: Yes.

10 JUDGE GEE: Thank you.

11 Mr. Frondorf.

12 MR. FRONDORF: One moment.

13 Nothing further. Thank you.

14 JUDGE GEE: Thank you very much.

15 THE WITNESS: Thank you.

16 JUDGE GEE: You're all done.

17 Let's go off the record.

18 (Off the record at 11:29 a.m.)

19 JUDGE GEE: All right. It is 12:29 and we are back on
20 record. Pursuant to what -- what Mr. Frondorf said, Respondent
21 has rested its defense. General Counsel, at this point, do you
22 have any witnesses to present for purposes of rebuttal?

23 MS. CHONG: Your Honor, I -- our position -- my -- is that
24 Respondent has not complied with the subpoena, and based on
25 that, we have in the record what we have for the General

1 Counsel's case-in-chief, and I do not, at this time, have a
2 rebuttal witness. I believe after Union's -- any rebuttal
3 witnesses presented by the Union, we can close the record, and
4 so that's my position.

5 JUDGE GEE: All right. Thank you. Ms. Multhaup, do you
6 have any -- does Charging Party have any rebuttal case?

7 MS. MULTHAUP: Yes, brief one.

8 JUDGE GEE: All right. Do you wish to call a witness?

9 MS. MULTHAUP: Yes, please.

10 JUDGE GEE: All right, would you call your rebuttal
11 witness, please?

12 MS. MULTHAUP: Yes. Charging Party calls Sarah Pappin.

13 JUDGE GEE: Ms. Pappin, come on up, please. I'll just
14 remind you that you continue to be under oath.

15 Whereupon,

16 **SARAH PAPPIN**

17 having been previously sworn, was called as a rebuttal witness
18 herein and was examined and testified as follows:

19 THE WITNESS: Thank you, Your Honor.

20 JUDGE GEE: Have a seat. Let's go off the record for one
21 second.

22 (Off the record at 12:30 p.m.)

23 JUDGE GEE: All right, Ms. Multhaup.

24 MS. MULTHAUP: Thank you.

25 **DIRECT EXAMINATION**

1 Q BY MS. MULTHAUP: Hi Sarah. I'd like to ask you a couple
2 questions. You've heard testimony from the Employer's
3 witnesses that the text messages that -- and calls were sent
4 were unrelated to strike activity and solely in regards to
5 questions about staffing. And so my -- my -- my questions
6 are -- are going to be in response to that -- that testimony.
7 When you -- you testified that after you sent the April 15th
8 strike notice to Jer Mackler and Amy Quesenberry that Amy
9 called you immediately after that; is that -- is that correct?

10 A Yes.

11 Q And how -- what, if any, reaction did you have to Amy
12 calling you?

13 A I was pretty alarmed by it. My understanding was that
14 once a strike notice was provided, that management didn't need
15 any additional confirmation that we were on strike or anything
16 like that. So I was very concerned that she was calling me.

17 MR. FRONDORF: Objection. This is not rebuttal. She
18 could have asked this during -- when she was on the stand
19 yesterday.

20 JUDGE GEE: Oh, this is -- this is rebuttal. Go ahead,
21 please.

22 Q BY MS. MULTHAUP: And did you -- did you interpret Amy and
23 Jer's text messages and calls to be in response to the strike,
24 or response to staffing, or something different?

25 A I just thought they were in response to the strike.

1 Q And did you --

2 MR. FRONDORF: Objection.

3 JUDGE GEE: Pardon me, there's an objection.

4 MS. MULTHAUP: Sorry.

5 MR. FRONDORF: Our case-in-chief presented no evidence
6 about Amy Quesenberry, and there being questions pertaining to
7 Amy Quesenberry. This is not rebuttal.

8 JUDGE GEE: I -- I -- I believe Respondent raised in its
9 defense, the reasons for its calls. And so this -- this is --
10 this appropriate for rebuttal. Go ahead. Go -- overruled. Go
11 ahead, please.

12 MS. MULTHAUP: Thank you.

13 Q BY MS. MULTHAUP: And did you have an understanding
14 from -- did you have an understanding about how other partners
15 felt about the -- the calls? What -- what was the
16 understanding that you had about why -- why they were being
17 called?

18 MR. FRONDORF: Yes, I'm going to object on multiple
19 grounds. One, subjective interpretations are not part of the
20 8(a)(1) inquiry.

21 JUDGE GEE: Let me respond to each in turn. The -- the
22 recipients reaction to the question, I believe, is one of the
23 factors. But I believe you're also going to object on hearsay;
24 is that right?

25 MR. FRONDORF: That is one of them; yes.

1 JUDGE GEE: It is hearsay. You -- you are calling for
2 hearsay.

3 MS. MULTHAUP: Your Honor, I think there's a -- there's a
4 couple of different -- different things happening here. One,
5 I'm -- I'm asking for the present-tense impression of this
6 witness during the strike when her par -- when her partners
7 were being called, what she understood, you know, what -- what
8 was her -- what was her impression?

9 Two, I'm not asking for any out-of-court statements. I'm
10 not ask -- asking for, you know, what those people said if --
11 if -- if anything.

12 JUDGE GEE: But you are.

13 MS. MULTHAUP: Well --

14 JUDGE GEE: That's exactly what you're asking for.

15 MS. MULTHAUP: Well, I -- I mean, that's -- my intention
16 is to ask this witness if -- if they had an impression of what
17 the -- what -- what response was being generated by these
18 calls, among -- among the coworkers. And I'm going to then ask
19 about if there was any effect that that -- that that response
20 had on future abilities for Sarah to engage in her protected
21 activity. And so -- so -- so that's where I'm -- I'm going.
22 So my -- my objective is not to introduce the -- the hearsay
23 evidence as -- as truth but --

24 And then third, you know, and pursuant to the motion for
25 sanctions, we ask for the ability to introduce hearsay evidence

1 because of the incomplete production by -- by Respondent.

2 JUDGE GEE: Okay. I haven't ruled on that -- that final
3 point. So let's take it question-by-question. I'll certainly
4 entertain your -- your objection.

5 MR. FRONDORF: Yes. And may I lodge my final objection?

6 JUDGE GEE: Sure.

7 MR. FRONDORF: One, I'll cite *Imply* (phonetic throughout
8 those foundational grounds for this question, but -- but going
9 back to my original -- original objection regarding subjective
10 interpretation, is not part of an 8(a)(1) inquiry, under the
11 Ross -- Rossmore House standard, which I believe Your Jud --
12 Your Honor may be weighing in this case. It's quite clear that
13 the test is an objective one that does not rely on subjective
14 interpretation, and that's from *Advanced Life Systems, Inc. v.*
15 *NLRB*, 898 F.3d 38, (D.C. Cir. 2018).

16 JUDGE GEE: Yes. Thank you. And I'm fully aware that
17 it's an objective standard. However, as I recall, the Board
18 and various judges have considered an individual's subjective
19 interpretation. I know it doesn't make sense, but I believe
20 that to be correct. If I am incorrect, that -- that an
21 individual's personal reaction should not be considered as part
22 of the -- the coercive analysis, then I will -- I will give
23 this testimony no weight, I assure you.

24 So go ahead, ask your questions. But I suspect there are
25 going to be a lot of objections, so let's, please, hold your

1 answer, and we'll take these one-by-one.

2 THE WITNESS: Thank you, Your Honor. I'll be sure to do
3 that.

4 Q BY MS. MULTHAUP: Did you have an impression, you know,
5 during the April 15th strike, about -- about what effects the
6 calls were having on your coworkers?

7 MR. FRONDORF: Objection.

8 JUDGE GEE: Basis?

9 MR. FRONDORF: What calls, what coworkers, when? The
10 question is very ambiguous. I believe that --

11 MS. MULTHAUP: I'm going to have to --

12 JUDGE GEE: Well, it's a -- it's a foundational question.
13 Go ahead. And then I'm going to ask a few questions. Go
14 ahead.

15 MS. MULTHAUP: Yes.

16 MR. FRONDORF: But what question is she answering, though?

17 JUDGE GEE: Did -- did the witness develop any impressions
18 as to coworkers' reactions in connection with the April 15th,
19 2022, strike.

20 THE WITNESS: Yes.

21 JUDGE GEE: And how?

22 THE WITNESS: So my coworkers -- I'm generally regarded as
23 the sort of knowledgeable one about Union stuff and my store.

24 JUDGE GEE: Right.

25 THE WITNESS: And so on the picket line, when we were --

1 my coworkers were getting these calls, they would then come to
2 me because, you know, I had been the one who had told them the
3 notices have been provided, you don't need to provide any
4 additional notice, like individually, that you're participating
5 in the strike, to be protected from retaliation. But then --
6 so if I tell them that, but then they're getting a call from
7 their manager that says, hey, call me back, you know about
8 this. Then it makes people anxious that what I told them isn't
9 true, or so -- yeah.

10 JUDGE GEE: All right. So let me take this one-by-one.
11 If you don't mind; I'm sorry.

12 MS. MULTHAUP: Sure.

13 JUDGE GEE: On what date did this occur?

14 THE WITNESS: This was the first day of the first strike.

15 JUDGE GEE: And what's that date?

16 THE WITNESS: April 15th, 2022.

17 JUDGE GEE: And you recall having this type of
18 conversation with how many people?

19 THE WITNESS: It was pretty much all my coworkers who were
20 on the picket line that day, so I would estimate, like five.

21 JUDGE GEE: I'm going to ask you about your individual
22 conversations with each of those five people. Okay?

23 THE WITNESS: Okay.

24 JUDGE GEE: Do you have any independent recollection of
25 each of those five? And if you don't, tell me the number over

1 which you have an independent recollection?

2 THE WITNESS: I'm sorry. I'm trying to make sure that
3 there is one that I have a memory that's specific enough that I
4 would feel comfortable proceeding.

5 JUDGE GEE: And if you don't, that's okay.

6 THE WITNESS: Oh. There's one that I have a pretty strong
7 memory of. We can proceed. And then if you think it's not
8 clear enough --

9 JUDGE GEE: Who is that person?

10 THE WITNESS: Jo Cormier.

11 JUDGE GEE: Could you spell the first and last name?

12 THE WITNESS: J-O C-O-R-M-I-E-R.

13 JUDGE GEE: And -- and where were you two at the time?

14 THE WITNESS: We were on the picket line right outside of
15 the store.

16 JUDGE GEE: Do you recall the approximate time?

17 THE WITNESS: It was early in the picket line, so I
18 believe around maybe 7:00 or 8:00.

19 JUDGE GEE: In the morning?

20 THE WITNESS: Yes.

21 JUDGE GEE: Do you recall if anyone else was around?

22 THE WITNESS: I mean, it was a picket line, so there were
23 many people, like, around, but not necessarily in the
24 conversation; if that's what you're asking.

25 JUDGE GEE: Were you next to Jo?

1 THE WITNESS: Yes.

2 JUDGE GEE: Can you tell me what happened?

3 THE WITNESS: Jo had just been called by Jer, and asked me
4 why he was calling.

5 JUDGE GEE: Do you recall his words?

6 THE WITNESS: Pretty closely, something along the lines
7 of, Jer just called me. Do I have to call him back? Why is he
8 calling?

9 JUDGE GEE: Did you respond?

10 THE WITNESS: I told her that she -- her strike notice had
11 been provided. Her name was on it. She didn't need to tell
12 him that she was on strike if she didn't want to.

13 JUDGE GEE: I'm getting confused with pronouns.

14 THE WITNESS: Uh-huh.

15 JUDGE GEE: Jo is a "he" or "she"?

16 THE WITNESS: She.

17 JUDGE GEE: And so who called her?

18 THE WITNESS: Jer.

19 JUDGE GEE: I see. Mr. Mackler?

20 THE WITNESS: Yes, correct.

21 JUDGE GEE: I see. Okay. Repeat what you said to -- to
22 Jo?

23 THE WITNESS: I told her that -- I said, a strike notice
24 has already been provided. You don't need to talk to Jer if
25 you don't want to. And then I think -- I'm relatively sure in

1 each of these conversations that I had, I said, you don't have
2 to call them back if you want to (sic), but you can if you want
3 to be like, doubly sure.

4 JUDGE GEE: And did Jo reply?

5 THE WITNESS: Jo, yes. She said that she did not want to
6 talk to him.

7 JUDGE GEE: Did you say anything?

8 THE WITNESS: I -- I -- just sort of, generally, assured
9 her. She was very, very anxious; and so like I was mostly
10 responding to her emotional state.

11 JUDGE GEE: How do you know she was anxious?

12 THE WITNESS: She is very emotive when she is anxious.

13 JUDGE GEE: Can you give us some -- some physical
14 indicators?

15 THE WITNESS: Quick in breathing, like higher voice,
16 twitchiness.

17 JUDGE GEE: Was there any -- any further discussion on
18 this point?

19 THE WITNESS: No. I believe after I -- my recollection is
20 I just assured her, and then she felt reassured enough to -- we
21 moved on with whatever we were doing.

22 JUDGE GEE: Go ahead, Ms. Multhaup.

23 MS. MULTHAUP: Thank you.

24 **RESUMED DIRECT EXAMINATION**

25 Q BY MS. MULTHAUP: Did you understand, or are -- are you

1 aware that -- let me start again. Are you aware if the calls
2 from management, from during the April 15th strike, affected
3 you or your coworkers' willingness, or interest, or feeling
4 like you were able to engage in further protected concerted
5 activities?

6 MR. FRONDORF: Objection.

7 JUDGE GEE: Basis?

8 MR. FRONDORF: Relevance. Beyond the scope of -- this is
9 not rebuttal. This is not -- simply not relevant. This is not
10 part of the analysis under the case law of this country to --
11 to -- to weigh this sort of evidence. It has no bearing.

12 JUDGE GEE: Why don't you address that, Ms. Multhaup?

13 MS. MULTHAUP: Your Honor, the -- the test is objective.
14 So the test is whether a reasonable employee would, you know,
15 feel intimidated or coerced under the circumstances. There has
16 to be some ability for a fact-finder to know what -- what a
17 reasonable employee would or wouldn't feel.

18 JUDGE GEE: Right. But I believe the gist of the
19 objection is that this is -- this is beyond the scope of
20 rebuttal.

21 MS. MULTHAUP: Oh. I mean, in -- in terms of whether
22 it's -- it's beyond the scope, this is -- this is my -- my last
23 question. I mean, just this -- this area, and it goes -- it's
24 rebuttal because on -- during the Respondent's case, their
25 management testified again that these calls had -- had nothing

1 to do with strikes. They were in no way meant to -- you know,
2 to co -- coerce or intimidate anyone. They were simply about,
3 you know, staffing issues. And so the rebuttal is, well,
4 that's not true, you know. Or -- or it is -- that might be
5 subjectively true. But the effect that they had, you know, is
6 different. So that's why it's in response to what was
7 testified to in the Respondent's case.

8 JUDGE GEE: Just that that's a little bit of a stretch,
9 but I will let you ask a few more questions.

10 MS. MULTHAUP: Thank you.

11 Q BY MS. MULTHAUP: Are you aware if there -- if the calls
12 from management to you and your coworkers during the April 15th
13 strike, had any effect on you or your coworkers' willingness to
14 engage in further protected concerted activity?

15 MR. FRONDORF: Objection.

16 JUDGE GEE: Let me -- let me ask the question, because
17 that was a real long question.

18 MS. MULTHAUP: Sorry. Thank you.

19 JUDGE GEE: The -- the calls from management, about
20 staffing.

21 THE WITNESS: Uh-huh.

22 JUDGE GEE: Did that affect your perspective about
23 engaging in Union, or what we call a "protected concerted
24 activity" going forward?

25 THE WITNESS: It did not impact my -- my personal.

1 JUDGE GEE: Did you observe that it affected anyone else?

2 THE WITNESS: Yes.

3 JUDGE GEE: How many people?

4 THE WITNESS: I would say several individuals, maybe five,
5 like a quarter of the store.

6 JUDGE GEE: For those -- let me -- let me go through each
7 of those five; okay?

8 THE WITNESS: Uh-huh.

9 JUDGE GEE: Name one person?

10 THE WITNESS: I can recall talking to Jo again about this
11 one, so we can stay on the same person, if that's helpful.

12 JUDGE GEE: And can you tell me how you believe this
13 affected Jo's willingness to participate in -- I'll just call
14 it Section 7 activity? You -- you know what I'm talking about.

15 THE WITNESS: Uh-huh.

16 JUDGE GEE: Section 7 activity going forward?

17 THE WITNESS: The next time that we went on strike, when I
18 was talking to Jo -- when we were thinking about going on
19 strike, deciding if we would or not. But Jo was very concerned
20 about -- about getting called again, and what she should do,
21 and basically expressed that she was -- she didn't really want
22 to participate in another strike, because she didn't want to
23 deal with this, sort of what she presented as a confrontation
24 with management.

25 JUDGE GEE: All right. I'm not going to consider that

1 statement, or any statements along these lines, because they
2 are hearsay.

3 Ms. Multhaup, do you have any other questions?

4 MS. MULTHAUP: No further questions.

5 JUDGE GEE: All right. Mr. Frondorf?

6 MR. FRONDORF: No. I don't think so.

7 JUDGE GEE: All right. Thank you very much. You're done.

8 THE WITNESS: Thank you.

9 JUDGE GEE: We have the outstanding issues about
10 conversion of the documents produced in the TIFF format, which
11 I previously stated was acceptable. We also have the issue to
12 address about the contentions that Respondent has failed to
13 comply with General Counsel's subpoena. General Counsel, would
14 you please give us an update as to the status of the agent --
15 the Agency's conversion of the documents produced in TIFF Plus
16 into a readily usable form; would you do that, please?

17 MS. CHONG: Yes, Your Honor. During the lunch break I
18 inquired with our Litigation Branch and was informed that the
19 documents are still being loaded, and about half of that has
20 been done. But there's no prediction or indication of when it
21 will be complete.

22 JUDGE GEE: All right. And with regard to -- or does any
23 other party wish to speak about that?

24 MR. GARBER: Yes, Your Honor, if I could, really quickly?

25 JUDGE GEE: I'm sorry. Ms. Multhaup, do you have

1 anything?

2 MS. MULTHAUP: No.

3 MR. GARBER: Oh. I'm sorry, Your Honor. Sorry.

4 JUDGE GEE: Okay. Yes, go ahead, Mr. Garber.

5 MR. GARBER: If you are asking us to brief this topic by
6 Friday of next week, can we put on the record specifically the
7 position as to which specific provisions of the subpoena are
8 deficient in our -- or you know, what specific -- how we are
9 deficient in our response, specifically, is that -- we've had
10 some arguments over words. So we just want to make sure we're
11 responding exactly to what's wrong.

12 JUDGE GEE: I believe that the General Counsel made that
13 quite clear this morning. Let me -- let me just state what my
14 notes reflect.

15 MR. GARBER: Okay.

16 JUDGE GEE: Let's go off the record, please.

17 (Off the record at 12:50 p.m.)

18 JUDGE GEE: On the record.

19 MR. GARBER: We're back?

20 JUDGE GEE: And here is my summary of General Counsel's
21 arguments regarding Respondent's noncompliance.

22 General Counsel, feel free to state if I'm saying this
23 incorrectly.

24 The -- one, Respondent failed to produce documents in meta
25 format or in a usable format, but rather produced in TIFF Plus,

1 which is not a usable format, as explained by Co-Counsel David
2 Gaston on Tuesday morning.

3 Two, Respondent failed to organize and compile the
4 produced documents in compliance with the paragraphs in
5 ordering laid out in the subpoena. This is required both by
6 the -- the terms of the subpoena, as well as by Federal
7 Procedure 34(b)(2)(e).

8 Third, Respondent's production of documents yesterday was
9 incomplete. And that -- and one example of how it was
10 incomplete, text messages lacked identifiers, which I'm
11 interpreting to mean the metadata saying, "Who was the sender".
12 Is that right, General Counsel?

13 MS. CHONG: As one example, Your Honor.

14 JUDGE GEE: Yeah. Yeah. Okay. A second example is that
15 certain emails were missing. General Counsel possesses
16 exhibits that showed that there are responsive texts and emails
17 that Respondent did not produce.

18 Four, Respondent failed to comply with the subpoena by
19 refusing to make available a custodian of records. General
20 Counsel will, therefore, be moving for a number of things,
21 including sanctions, that Respondent be precluded from offering
22 documents that it should have furnished pursuant to the
23 subpoena. This point is obviously moot because Respondent has
24 presented its defense. That Respondent be barred from adducing
25 certain testimony based on documents that it should have

1 presented. Again, that's moot because Respondent has concluded
2 its -- its defense.

3 General Counsel seeks the ability to rely on secondary
4 evidence, including hearsay. And that -- that I, the
5 administrative law judge, draw all appropriate inferences for
6 Respondent's failure to not produce the entirety of the
7 subpoenaed documents. That I, the administrative law judge,
8 strike the Employer's answer -- although, General Counsel, I
9 don't know which paragraphs that would -- that would pertain
10 to. I guess, materially, it'd be paragraph 5.

11 MS. CHONG: That would be correct, Your Honor, paragraph
12 5.

13 JUDGE GEE: All right. The Charging Party Union joins the
14 General Counsel in all of the foregoing. She raised some
15 specific examples with regard to the Charging Party Union's
16 subpoena, paragraphs 5 and 6. For number 5, texts and emails
17 were not produced. And then for a subpoena para -- Union
18 subpoena paragraph number 6, the Employer -- Respondent's
19 Employer produced nothing. Therefore, Charging Party joins the
20 General Counsel in -- in seeking sanctions in adverse
21 inferences.

22 That's what I have in my notes. However, the -- the
23 parties have all asked that the parties brief their positions,
24 including the actions that I -- they urge that I take. And the
25 parties' briefs to me will be due next Friday, July 21st, at

1 noon Pacific Time.

2 Because General Counsel has the right to recall witnesses
3 to complete the presentation of her case-in-chief, I am
4 ordering this hearing recessed until 9 a.m. on Tuesday, August
5 8th, 2022 (sic), at a location to be determined by the Regional
6 Director of Region 19.

7 MS. CHONG: Your Honor?

8 JUDGE GEE: Yes.

9 MS. CHONG: Would it be possible to pick another date?
10 I'm going to be out of the country and unreachable.

11 MR. GARBER: We have a similar -- similar issue.

12 JUDGE GEE: I'm going to keep that particular date and I
13 will entertain any motions to change the date from -- from the
14 parties.

15 Anything else before we recess for -- for -- for now?

16 Let me start with you, General Counsel?

17 MS. CHONG: Yes. As far as GC-11, are you going to rule
18 on that now or after -- after we brief?

19 JUDGE GEE: I'm withholding ruling on that. Anything
20 else, General Counsel?

21 MS. CHONG: No, Your Honor.

22 JUDGE GEE: All right. Ms. Multhaup?

23 MS. MULTHAUP: No, Your Honor.

24 JUDGE GEE: Okay. Mr. Frondorf?

25 MR. GARBER: If I could just put on the record. And I'm

1 not -- I'm not going to --

2 JUDGE GEE: Of course, of course, Mr. Garber.

3 MR. GARBER: -- I'm not going to argue anything about the
4 subpoena. But just in response to your comment that answers
5 were deficient based on some of the -- regarding TIFF Plus,
6 regarding what Mr. Gaston said, I would just like to note --

7 JUDGE GEE: Oh. Oh. I believe that the subpoena
8 production was deficient.

9 MR. GARBER: I'm sorry. I'm sorry. Yeah. Yes. I would
10 just note for the record that Mr. Gaston was never offered as
11 an expert witness. If he isn't a so-called "expert", then the
12 Federal Rules would not comply with an offering that's stated,
13 so he -- he should not be relied upon.

14 JUDGE GEE: Thank you. Thank you. That's -- that was
15 helpful. All right.

16 MR. FRONDORF: And --

17 JUDGE GEE: Yes, Mr. Frondorf.

18 MR. FRONDORF: Yes, one minor thing. After Sarah had
19 completed, you indicated that you would not be relying, on I
20 believe you said, the hearsay testimony that was elicited.

21 JUDGE GEE: That's correct.

22 MR. FRONDORF: And does that just apply to Jo, or does
23 that apply to her entire appeal for a rebuttal testimony? I
24 was -- I was confused as to this.

25 JUDGE GEE: I -- I believe it was just as to what Jo said

1 about her fear or concerns about participating in Section 7
2 activity going forward.

3 MR. FRONDORF: Thank you.

4 JUDGE GEE: Thank you. All right. Thank you all. I
5 will -- I will see you, perhaps, sometime in August. But
6 that's when we're scheduled to meet. And again, I -- I
7 understand that people go on vacation. So just please, please
8 submit any motions for a -- for a date that's mutually
9 agreeable for -- for all parties. Thank you.

10 MR. FRONDORF: Thank you.

11 MR. GARBER: Thank you.

12 JUDGE GEE: And I ask that counsel confer -- we're off
13 record.

14 (Off the record at 1:00 p.m.)

15 JUDGE GEE: Just go back on record.

16 THE COURT REPORTER: We're back on.

17 JUDGE GEE: The parties conferred and factored in their
18 various dates of unavailability, and the soonest available date
19 for all parties will be August 31st, 2023.

20 We will reconvene at 9 a.m. on that day at a hearing room
21 to be determined by the Regional Director of Region 19.

22 With that, we're off record.

23 **(Whereupon, the hearing in the above-entitled matter was**
24 **recessed at 1:09 p.m. until Thursday, August 31, 2023 at 9:00**
25 **a.m.)**

C E R T I F I C A T I O N

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 19, Case Number 19-CA-299573, Starbucks Corporation and Workers United Labor Union International, Affiliated with Service Employees International Union, held at the National Labor Relations Board, Region 19, 915 2nd Avenue, Room 1826, Seattle, Washington 98174, on July 12, 2023, at 9:10 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



BRUCE CARLSON

Official Reporter

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 19

In the Matter of:

Starbucks Corporation, Case No. 19-CA-299573

Respondent,

and

Workers United Labor Union
International, Affiliated with
Service Employees International
Union,

Union.

Place: Seattle, Washington (Via Zoom Videoconference)

Dates: August 31, 2023

Pages: 310 through 327

Volume: 3

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 19

In the Matter of:

STARBUCKS CORPORATION,

Respondent,

and

AND

WORKERS UNITED LABOR UNION
 INTERNATIONAL, AFFILIATED WITH
 SERVICE EMPLOYEES INTERNATIONAL
 UNION,

Union.

Case No. 19-CA-299573

The above-entitled matter came on for hearing, via Zoom videoconference, pursuant to notice, before **BRIAN GEE**, Administrative Law Judge, at the National Labor Relations Board, Region 19, 915 2nd Avenue, Room 2948, Seattle, Washington 98174, on **Thursday, August 31, 2023, 9:04 a.m.**



1 A P P E A R A N C E S

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E X H I B I T SEXHIBITIDENTIFIEDIN EVIDENCE**Joint:**

J-8

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General Counsel:

GC-11

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GC-12

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P R O C E E D I N G S

JUDGE GEE: Good morning, everyone. It is Thursday, August 31st, 2023. We are resuming the hearing at Starbucks Corporation, case number 19-CA-2999573. Today's session is being conducted by Zoom video conferencing pursuant to my order dated August 28th, 2023, granting the unopposed joint motion by the General Counsel and the Charging Party Union.

Before we proceed further, let me get the appearances for the record for the General Counsel.

MS. CHONG: Angelie Chong for the General Counsel.

JUDGE GEE: Thank you. For the Charging Party Union?

MR. KAPLAN: I'm Thomas Kaplan for Workers United.

JUDGE GEE: Thank you. And for Respondent Employer?

MR. FRONDORF: This is Alex Frondorf for the Respondent Employer. And I'll let each of my colleagues introduce themselves.

MR. GARBER: Noah Garber for Respondent.

MR. BECK: Ian Beck for Respondent.

JUDGE GEE: Thank you. On July 12th, I recessed the hearing of this matter because General Counsel still needed to convert about half the documents which Respondent had furnished pursuant to the subpoena in the TIFF+ format. Obviously, the General Counsel needed to convert all of the documents and then review them before she could proceed with the remainder of her case.

1 General Counsel, may I confirm that you have converted all
2 of the documents?

3 MS. CHONG: Yes, Your Honor, we have.

4 JUDGE GEE: Thank you. Will you be offering any into the
5 record today?

6 MS. CHONG: Yes, Your Honor, We --

7 JUDGE GEE: Okay. Just -- just hold off on that. We'll
8 get back to that in just a sec. Apologize for cutting you off.

9 And Mr. Kaplan, the Union has been able to convert all of
10 the documents it received from Respondents in TIFF+?

11 MR. KAPLAN: Your Honor, I haven't been able to confirm
12 that as of yet.

13 JUDGE GEE: Okay. Well, then please confirm that later
14 and let me know. Or certainly let me know if that affects in
15 any way whether the Union will be presenting, offering any
16 documents into the record.

17 Also, on July 12th, I instructed the parties to submit to
18 me briefs addressing their assertions made by the General
19 Counsel and the Union at trial that Respondent have failed to
20 comply with their subpoenas. All of the parties submitted
21 briefs by the due date. And August 9th I issued an order
22 instructing Respondent to present its custodian of records this
23 morning to testify about Respondent's efforts to search for and
24 produce the subpoena documents.

25 Yesterday, August 30th, Respondent filed with the Board a



1 request for special permission to appeal my order. While that
2 matter is pending before the Board, we will proceed with a
3 hearing.

4 Mr. Frondorf as a courtesy, let me ask you whether
5 Respondent intends to present its custodian of records this
6 morning?

7 MR. FRONDORF: We -- we do not, because such an individual
8 does not exist, as you're well aware. And for the reasons that
9 we've set forth in our briefs prior to your August 9th order.
10 And set forth in our special appeal that was filed yesterday,
11 August 30th.

12 JUDGE GEE: Thank you. The parties can address the
13 appropriateness of -- of any sanctions in their briefs to me.

14 All right. Let's turn back to you, General counsel. Now
15 that the Agency, or the General Counsel has converted all of
16 the documents to -- do you wish to offer any into the record?

17 MS. CHONG: Yes, Your Honor. We have converted the
18 documents provided on July 11 by Respondent. And as it turned
19 out, it contained no metadata, no additional information about
20 the sender of the text messages. And it appears as if the
21 metadata had been scrubbed. So we are working with substandard
22 documents. However, the parties have reached a stipulation
23 regarding the sender of certain text messages. And just a few
24 moments ago, I had emailed to all parties, and Your Honor, as
25 well as the Court reporter, Joint Exhibit 8, which is our

1 stipulation as to the contents and admissibility of General
2 Counsel Exhibit 11, along with a copy of General Counsel
3 Exhibit 11. And we -- I request the admission of both
4 documents into the record.

5 JUDGE GEE: All right. All right. Just -- let's go off
6 record for a moment while I take a peek at that.

7 (Off the record at 9:10 a.m.)

8 JUDGE GEE: Thank you. I've had an opportunity to look at
9 both Joint Exhibit 8 and General Counsel Exhibit Number 11.
10 And General Counsel, I believe there's one addition you wish to
11 make with regard to GC-11?

12 MS. CHONG: Yes, Your Honor. I will be adding pages for
13 the entirety of the document and will be resubmitting GC-11.

14 JUDGE GEE: All right. And you will do this shortly after
15 today's hearing ends? And email it to everyone?

16 MS. CHONG: Yes, Your Honor. And with that, I would like
17 to offer GC-11, as well as Joint Exhibit 8.

18 JUDGE GEE: With that very modest change does -- does any
19 party have any objection to the receipt of Joint Exhibit 8?
20 Let me ask you, Mr. Kaplan, on behalf of the Union.

21 MR. KAPLAN: No, we do not object.

22 JUDGE GEE: All right. Mr. Frondorf?

23 MR. FRONDORF: We do have an objection, but I do, because
24 we are on the record. And to protect and correct the record of
25 serious false statements made by the counsel, for General

1 Counsel. One that there is no indication of the sender in the
2 General Counsel's Exhibit 11. That is demonstrably false.
3 That information is contained in the document.

4 Second, the allegation that metadata was scrubbed from our
5 production is false. She has no basis to make that claim. And
6 if these claims persist, it is we who will be seeking sanctions
7 against the General Counsel.

8 JUDGE GEE: With that the Respondent has no opposition to
9 the receipt of Joint Exhibit 8?

10 MR. FRONDORF: We do not.

11 JUDGE GEE: Thank you. Let me ask General Counsel's
12 offered her Exhibit Number 11, noting that immediately after
13 this hearing or this session of the hearing, General Counsel
14 will be adding page numbers.

15 Mr. Kaplan, does the Union have any objection to receipt
16 of General Counsel 11 with page numbers added?

17 MR. KAPLAN: Does no.

18 JUDGE GEE: All right. Mr. Frondorf?

19 MR. FRONDORF: Yeah, General Counsel 11, we have no
20 objection.

21 JUDGE GEE: All right. Thank you. With the caveat that
22 General Counsel will be adding page numbers to GC-11, I'll --

23 MR. FRONDORF: So -- so long as the base numbers remain.
24 Yes, that's fine.

25 JUDGE GEE: General Counsel Exhibit Number -- or General

1 Counsel Exhibit Number 11 is received as well as Joint Exhibit
2 Number 8.

3 **(General Counsel Exhibit Number 11 Received into Evidence)**

4 **(Joint Exhibit Number 8 Received into Evidence)**

5 JUDGE GEE: General counsel, do you have any other
6 exhibits you wish to offer into the record?

7 MS. CHONG: Yes, Your Honor. I would like to admit
8 General Counsel 12, which has just been sent out to all parties
9 and Your Honor. As well as the Court reporter, and this is a
10 three page production submitted by respondent on the day after
11 this hearing recessed. It was received in the TIFF+ format
12 again. And it was converted using the relativity platform.
13 And again, there is no metadata.

14 There's no custodian of records here to date explain the
15 markings on the exhibit. And the apparent incompleteness of
16 the documents, which I'd like to admit General Counsel 12 into
17 evidence and also ask the parties stipulate that this is a text
18 message exchange between what appears to be Brendan Branson and
19 an employee at the West Lake Drive thru store on the dates
20 reflected on the text message.

21 MR. FRONDORF: I'd like to note for the record that while
22 we were doing Joint Exhibit 11 yesterday in the stipulation,
23 this could have been provided to us but wasn't.

24 JUDGE GEE: All right. Mr. Kaplan, does the Union have
25 any objection to my receipt of GC Exhibit 12?

1 MR. KAPLAN: The Union does not object.

2 JUDGE GEE: Mr. Frondorf?

3 MR. FRONDORF: One moment, Your Honor. No objection.

4 JUDGE GEE: All right. Hearing no objection, GC-12 is
5 received.

6 **(General Counsel Exhibit Number 12 Received into Evidence)**

7 JUDGE GEE: Let me go back to GC-11. And while I have the
8 parties on the line, let me ask some questions about it. One
9 second, please.

10 MR. FRONDORF: In Your Honor, I got one comment to make
11 about GC-12 when it's appropriate.

12 JUDGE GEE: Let's -- let's address your -- your issue now,
13 please.

14 MR. FRONDORF: Once again --

15 JUDGE GEE: Just go ahead.

16 MR. FRONDORF: Once again, Counsel for the General Counsel
17 has accused us of scrubbing or omitting metadata from what she
18 has introduced as General Counsel Exhibit 12. As she is well
19 aware these are text messages from partners, not in our
20 custody, possession, or control. We have produced them in the
21 manner in which we receive them. And the allegation once
22 again, that metadata has been removed or not provided is simply
23 false. And I'm growing tired of it. She knows better. Thank
24 you.

25 JUDGE GEE: Thank you, Mr. Frondorf.

1 MS. CHONG: Your Honor, may I respond?

2 JUDGE GEE: Yes, but briefly, please.

3 MS. CHONG: Respondent makes representations about the
4 process and procedure of collecting documents. But as an
5 example of why we need a custodian of records, Your Honor,
6 during the hearing, it's clear in the transcript that
7 Respondent's Counsel stated that at text messages at GC-11
8 appeared to be from Jerry Mackler. It is obvious that that was
9 not true, that there were other senders of these text messages,
10 including Brendan Brandon -- Brendan Branson.

11 So we cannot rely on Respondent's representations about
12 the production.

13 JUDGE GEE: All right. Thank you. And let me -- let me
14 just clarify something for the record. When you say Jerry
15 Mackler, you're referring to Jeremy Mackler.

16 MS. CHONG: Jeremiah Mackler, Your Honor.

17 JUDGE GEE: Jeremiah Mackler.

18 MS. CHONG: And I am specifically referencing the portion
19 of the transcript at page 207, line 24.

20 JUDGE GEE: All right. That's fine. All right. Getting
21 back to General Counsel Number 11, if everyone could please
22 take a look at page 1 of that document for me. I have some
23 questions about the different columns. Column one where it
24 says either sent or received, that would refer to -- that would
25 be a reference from the -- the perspective of the owner of the

1 cell phone that I believe it's a he, either sent the text or
2 received it; is that correct?

3 MR. FRONDORF: Is the question to me, Your Honor?

4 JUDGE GEE: Well, let's -- let me -- let me just go
5 through everyone.

6 General Counsel, is that right?

7 MS. CHONG: It appears to be the recipient, well, the
8 person in the third column seems to be the person that received
9 the text message just in the context.

10 JUDGE GEE: Oh, just we're doing just the leftmost column,
11 the first column, which I'll call the first column.

12 MS. CHONG: I see the word sent to Your Honor.

13 JUDGE GEE: And that refers to -- let me actually start
14 with Mr. Frondorf. You might be the most familiar with this --
15 this document. That first column will indicate from the
16 perspective of the owner of the cell phone, whether he sent the
17 message or received the message; is that right?

18 MR. FRONDORF: Yeah, I'm going to let my colleague Ian
19 Beck respond to that question.

20 JUDGE GEE: All right. Mr. Beck, please.

21 MR. BECK: The answer is, quite simple, Your Honor. That
22 your interpretation is correct. So the text message is
23 displayed in chart, and the chart seen on page 1. And the
24 others similar chart format are sent from Jerry Mackler's
25 phone. So in the leftmost column, when it says sent or

1 received, that indicates that Jerry Mackler either sent the
2 message that's displayed in that row or received the message
3 that's displayed in that row.

4 JUDGE GEE: Okay. Thank you, Mr. Beck. And then the
5 second column, which shows the date and the time of the text,
6 whether it was sent or received.

7 MR. BECK: That's correct.

8 JUDGE GEE: And the third column would show the person
9 with whom Mr. Mackler communicated?

10 MR. BECK: Correct, Your Honor. More specifically, the
11 third column shows how the information has been saved in Jerry
12 Mackler's phone, meaning if he's entered that phone number as a
13 saved contact and named it, it would display the name that he
14 saved it under and the phone number. In some instances, Your
15 Honor, I believe he did not save the number as a contact. So
16 it may lack a name, but the third column indicates the phone
17 number and contact with whom Jerry was communicating.

18 JUDGE GEE: And to the extent that there is a specific
19 name that would be the person who -- whom Mr. Mackler was
20 communicating with?

21 MR. BECK: That's correct.

22 JUDGE GEE: All right. And the fourth and final column is
23 simply the substance of the communication; is that correct?

24 MR. BECK: That is correct as well, yes.

25 JUDGE GEE: Thank you. And the redacted portions of these

1 pages simply remove information pertaining to text messages
2 that fall outside the scope of General counsel's subpoena.

3 MR. BECK: That is also correct, Your Honor. Yes.

4 JUDGE GEE: All right. Thank you. Then turning to page 9
5 of General Counsel 11. This would appear to be a screenshot
6 from somebody to another person named Deborah; is that right?

7 MR. BECK: That's the --

8 JUDGE GEE: Let me ask you, Mr. Beck.

9 MR. BECK: Yes. And I believe that the Respondent is --
10 has in the stipulation or is willing to stipulate that the
11 screenshot was taken by Brendan Branson, who would have been
12 the author of the text messages shown in blue on the right side
13 of the screen in these screenshots.

14 JUDGE GEE: All right. And that stipulation being made,
15 General Counsel, do you -- do you agree to this? Do you agree
16 to so stipulate?

17 MS. CHONG: We have stipulated to that. But I'll note
18 that there's no mention of Brendan on page 9 of this document.
19 The reason I was comfortable stipulating that it is Brendan is
20 based on the following page where Brendan is introduced,
21 introducing himself to Sarah.

22 JUDGE GEE: All right. So that stipulation, Mr. Beck,
23 would apply to pages 9 and 10?

24 MR. BECK: Yes, Your Honor.

25 JUDGE GEE: All right. General counsel stipulates; is

1 that right, Ms. Chong?

2 MS. CHONG: Yes, Your Honor.

3 JUDGE GEE: And Mr. Kaplan, the Union stipulates. Mr.
4 Kaplan. Do you hear us?

5 MR. KAPLAN: I apologize. Your Honor, I had myself on
6 mute, but yes the Union stipulates.

7 JUDGE GEE: Okay. Thank you. All right. Then turning to
8 the text messages what appear to be screenshots of text
9 messages on pages 19, 20, and 21. Let me ask Ms. Chong; is
10 this is this covered in in Joint Exhibit 8 as to the -- the
11 sender, and the recipient?

12 MS. CHONG: Yes, Your Honor. All those pages are covered.

13 JUDGE GEE: Okay. Thank you. All right. Those are --
14 those are -- thank you. Thank you all. Those are all my
15 questions about General Counsel Exhibits. GC-12 is received.
16 General Counsel any other exhibits to offer into the record?

17 MS. CHONG: No, Your Honor.

18 JUDGE GEE: All right. Mr. Kaplan, at this point, does
19 the Union wish to offer any exhibits into the record?

20 MR. KAPLAN: It does not, Your Honor.

21 JUDGE GEE: All right. Mr. Frondorf responded. It's done
22 with its -- its defense; is that correct?

23 MR. FRONDORF: That is correct, Your Honor.

24 JUDGE GEE: Thank you. All right. General Counsel, do
25 you rest your case-in-chief?

1 MS. CHONG: Yes, Your Honor.

2 JUDGE GEE: All right. Thank you. Mr. Kaplan, the Union
3 is done with its presentation of evidence; is that correct?

4 MR. KAPLAN: It is, Your Honor.

5 JUDGE GEE: Thank you. And Mr. Frondorf, nothing more
6 from Respondents; is that right?

7 MR. FRONDORF: Nothing further, Your Honor.

8 JUDGE GEE: Thank you. The parties will be provided 35
9 days to file post-hearing briefs. The due date will therefore
10 be Friday, October 6th, 2023. The briefs should be filed
11 directly with the San Francisco Division of judges, regardless
12 of whether they are e-file or mail. See Sections 102.2 through
13 102.5 of the Board's rules and regulations for filing and
14 service requirements.

15 Any request for an extension of time for the filing of
16 briefs must be made in writing to the associate chief judge in
17 that office and served on the other parties. The positions of
18 the other parties regarding the extension should be obtained
19 and set forth in the request. It is the policy of the Division
20 of Judges to grant discretionary extensions only when they are
21 clearly justified. Requests for extensions must contain
22 specific reasons and show that the requesting party cannot
23 reasonably meet the current deadline.

24 Please refer to the Board's rules and regulations for
25 further information regarding the filing of briefs and proposed

1 findings for my consideration. And regarding procedures before
2 the Board after the issuance of my decision. Finally, I remind
3 you that settlement is still an option. In fact, now that the
4 evidence is all in. You might better be able to assess your
5 chances of winning than you were at the outset of the trial. I
6 therefore encourage all parties to revisit and carefully weigh
7 the risks entailed and decide whether an amicable settlement of
8 the issues might not offer a more satisfactory solution.

9 There being nothing further. The hearing is now closed.
10 We are off the record. Thank you all.

11 MS. CHONG: Thank you, Your Honor.

12 MR. FRONDORF: Thank you, Your Honor.

13 JUDGE GEE: Thank you.

14 **(Whereupon, the hearing in the above-entitled matter was closed**
15 **at 9:48 a.m.)**

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C E R T I F I C A T I O N

This is to certify that the attached proceedings, via Zoom videoconference, before the National Labor Relations Board (NLRB), Region 19, Case Number 19-CA-299573, Starbucks Corporation and Workers United Labor Union International, affiliated with Service Employees International Union, held at the National Labor Relations Board, Region 19, 915 2nd Avenue, Room 2948, Seattle, Washington 98174-1078, on August 31, 2023, at 9:04 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



AMANDA SELF

Official Reporter

